

5

CONSIDERATION OF MISCELLANEOUS BILLS AND RESOLUTIONS (Part 1)

Y 4. F 76/1:B 49/2/994/
PT. 1

Consideration of Miscellaneous Bill...

MARKUPS

BEFORE THE
SUBCOMMITTEE ON
ECONOMIC POLICY, TRADE AND ENVIRONMENT
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST AND SECOND SESSIONS

OCTOBER 6, AND NOVEMBER 16, 1993
FEBRUARY 8, AND MARCH 10, 1994

Printed for the use of the Committee on Foreign Affairs



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3

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CONTENTS

	Page
October 6, 1993:	
The Iraqi Claims Act of 1993 and the Lifting of South African Sanctions ..	1
November 16, 1993:	
H. Con. Res. 138, Saudi Arabia and the GATT	11
H. Con. Res. 175, concerning the Arab League Boycott of Israel	12
February 8, 1994:	
H.R. 3813, The Environmental Export Promotion Act of 1994	13
March 10, 1994:	
Subcommittee Draft of Export Administration Act, March 10, 1994	17

APPENDIX

The lifting of South African Sanctions	29
Amendment offered by Hon. Don Manzullo regarding South African Sanctions	42
The Iraqi Claims Act of 1993	43
H. Con. Res. 138, Saudi Arabia and the GATT	53
H. Con. Res. 175, concerning the Arab League boycott of Israel	57
Hon. Toby Roth, prepared statement on the Environmental Export Promotion Act	61
H.R. 3813, The Environmental Export Promotion Act of 1994	63
Hon. Sam Gejdenson, prepared statement on the Export Administration Act ..	73
Hon. Eliot L. Engel, prepared statement	77
Amendment offered by Hon. Don Manzullo to the Export Administration Act	79
Amendment offered by Hon. Sam Gejdenson to the Export Administration Act	85
A copy of the subcommittee draft of the Export Administration Act	86

MARKUP OF IRAQI CLAIMS ACT OF 1993 AND LIFTING OF SOUTH AFRICAN SANCTIONS

WEDNESDAY, OCTOBER 6, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON ECONOMIC POLICY,
TRADE AND ENVIRONMENT,
Washington, DC.

The subcommittee met, pursuant to call, at 1:41 p.m. in room 2200, Rayburn House Office Building, Hon. Sam Gejdenson (chairman of the subcommittee) presiding.

Mr. GEJDENSON. The subcommittee has before it a bill to lift the remaining economic sanctions on South Africa as requested by Nelson Mandela in a speech before the United Nations several weeks ago. A copy of the bill has been distributed.

I would like to mention to members that the Black Caucus, which is in general support of this legislation, is also meeting this afternoon. It is our expectation they will support the bill. If we have any further changes of course we can, and concerns, we can obviously accommodate those tomorrow in full committee markup or Mr. Johnston's subcommittee.

Will the staff director please read the bill?

Mr. SCHEIBEL. This act may be cited as the South African Democracy Transition Support Act of 1993.

Mr. GEJDENSON. Without objection, the bill will be considered as read and open for amendment at any time.

[The information appears in the appendix.]

Mr. GEJDENSON. Are there any amendments?

Mr. MANZULLO. I have an amendment.

Mr. GEJDENSON. Mr. Manzullo.

Mr. MANZULLO. Has the amendment been circulated?

Mr. GEJDENSON. Could you circulate the amendment? Is this the amendment we talked about?

Mr. MANZULLO. Yes, Valerie Mims.

Mr. GEJDENSON. Can we have somebody from the State Department up here?

Mr. Manzullo has an amendment. Did you read the amendment?

Mr. SCHEIBEL. At the end of the section entitled U.S. assistance for the transition to a nonracial democracy, add the following. South African Communist Party and Pan-Africanist Congress. Assistance provided in—

Mr. GEJDENSON. Without objection, the amendment will be considered as read.

[The amendment appears in the appendix.]

Mr. GEJDENSON. Mr. Manzullo, do you have a statement in support of your bill?

Mr. MANZULLO. Thank you, Mr. Chairman.

Mr. Chairman, I support the overall thrust of this legislation, which would lift the sanctions against South Africa. However, some provisions greatly concern me. Most importantly, I have serious reservations about section 5, which provides a blank U.S. aid check to a nonracial Government of South Africa.

Specifically paragraph B, sentence two, provides for limitations of assistance except for the Transitional Executive Council, any South African higher education institution, and, "any other organization, entity or activity if the President determines that the assistance would promote the transition to nonracial democracy in South Africa."

This determination would have to be based on, "consultations with South African individuals and organizations representative of the majority population in South Africa, particularly through the Transitional Executive Council."

I am fully confident that the President would not authorize direct aid to revolutionary and terrorist groups in South Africa, but I believe it is necessary to reinforce in our laws that no U.S. aid would be inadvertently sent to extremist groups in South Africa.

Because of the close links and cross-membership among the African National Congress, some of whom serve on the Transitional Executive Council, the South African Communist Party and the Pan-Africanist Congress, I am very concerned about the possibility that some of our foreign aid money could be diverted to these organizations under the guise of boosting democracy or education.

Mr. Chairman, the South African Communist Party and the Pan-Africanist Congress still contain many extreme elements committed to violent revolutionary solution to the complex problems in South Africa. I urge my colleagues to support my amendment that would codify in law that no U.S. aid should go to the SACP and the PAC.

Even though I have concerns about some of the extremist elements in the ANC, I did not craft this amendment to target them because their leadership has evolved into a more moderate force over the past 3 years than the SACP or the PAC. The ANC has abandoned the arms struggle and most of its rhetoric about state control of the economy.

I would appreciate the support of the subcommittee for my amendment. I believe this amendment is reasonable. I am willing to entertain any other suggestions on which groups would be considered non-Democratic and violent that can be added to the list contained in my amendment.

Mr. GEJDENSON. Do the folks from the State Department want to identify themselves and possibly comment on Mr. Manzullo's amendment?

Ms. MIMS. Mr. Chairman, my name is Valerie Mims. I am Deputy Assistant Secretary of State for Legislative Affairs. And I have with me Ken Scott from the Office of Southern African Affairs. While we just received this amendment, we are reviewing it and we do have one of our experts coming over from the State Department.

Mr. Scott will comment generally.

Mr. SCOTT. Mr. Chairman, thank you very much.

As I say, one of my colleagues who deals directly and for a long time with this issue is on her way. But I just wanted to comment in general that whereas obviously one shares the concerns of Mr. Manzullo, and I might say it is excellent how so many of the committee have turned out for this hearing, that the funds going for voter education is for all the parties. It is not to be targeted for any specific parties, but it is a general fund which goes to all the parties for the process of preparing for the transition.

And obviously there are major parties involved and the funds will be going to the major parties. The major parties do have allies. But there are ways to ensure that the funds go for the purpose of voter education for the purpose of a peaceful transition.

Mr. GEJDENSON. Let me make a suggestion. I think Mr. Manzullo wants to pursue his amendment. I would ask either withdraw the amendment, or offer it tomorrow at the full committee. If the gentleman is comfortable with that, it would give the State Department a chance to come back. Maybe there is some room for compromise, maybe there isn't. You are going to have a second vote anyway whether you win or you lose.

Would that be acceptable to the gentleman?

Mr. MANZULLO. If I could have a moment, please.

Mr. GEJDENSON. We are going to do it at full committee anyway.

Mr. MANZULLO. I would defer to the committee. I would request that when you come back from State, that somebody be prepared to defend the official policy of the Pan-African Congress, which is one bullet, one settler, and officially still believes in killing white settlers.

Mr. GEJDENSON. I doubt you will find somebody to defend that. They may be able to defend the legislation, if not exactly that policy.

Ms. MIMS. Thank you, Mr. Manzullo. We will be happy to work with you throughout the day on this effort as well.

Mr. GEJDENSON. The chairman appreciates Mr. Manzullo's efforts.

Mr. Roth.

Mr. ROTH. Mr. Chairman, I think Mr. Manzullo has a good amendment. The U.S. funds should not go to these groups. Without this amendment, there is nothing in the bill to prevent these funds from going to groups such as this. And the South African Communist Party is still a potent force in that part of the world. And the Pan-Africanist Congress has a basic policy of urging the murder of white farmers.

This is a terrorist group that is opposed to any nonracial Government in South Africa and they urge armed revolt, and I don't think we want to support them. So I think Mr. Manzullo has a good amendment, because without his amendment, we do not have those safeguards.

Mr. GEJDENSON. Thank you. You will get together, Mr. Manzullo, with my staff, hopefully before tomorrow's markup. And we would also suggest that maybe somebody from Mr. Johnston's staff be involved as well.

Mr. MANZULLO. Mr. Chairman, what is the name of the individual who is coming from State tomorrow?

Mr. SCOTT. Well, tomorrow will be definitely Mr. Dan Mazulla.
Mr. MANZULLO. Mazulla.

Ms. MIMS. Mozena.

Mr. SCOTT. Mozena, Dan Mozena.

Mr. GEJDENSON. Having a hard time with those vowels in the names.

Mr. SCOTT. Dan Mozena, M-O-Z-E-N-A. I have your name right in front of me, sir.

Mr. GEJDENSON. Any other amendments?

Mr. JOHNSTON. Mr. Chairman, I want to inquire, will you be at the 3 o'clock meeting?

Ms. MIMS. Yes, we will.

Mr. SCOTT. As will Mr. Mozena.

Mr. MANZULLO. That will be offered by Mr. Burton at that 3 o'clock meeting.

Mr. GEJDENSON. Maybe he will get the same kind of resolution. If not, we can always work it out. Any further amendments?

If not, hearing no amendments, all those in favor, say aye.

Opposed, say nay.

The ayes have it. The ayes clearly have it. The bill is passed to the full committee.

The subcommittee has before it the Iraqi Claims Act of 1993. This legislation authorizes vesting seized Iraq assets in the United States in order to allow claims settlement process to go forward. A copy of the bill has been distributed.

I received a letter from Mr. Bereuter that raises some valid points that I would like to explore a little further. We have with us representatives from the administration to answer questions we have on this bill.

It is my understanding that the Consarc Corporation claims \$6.4 million was illegally blocked by the U.S. Government. A District Court ruled in Consarc's favor on December 29, 1992. The Treasury Office of the foreign assets control has appealed the case.

I would like to ask the Treasury counsel how the pending legislation would affect Consarc in its effort to recover \$6.4 million through the courts. Under this legislation, what type of claimants would receive priority consideration and would this include members of the U.S. Armed Forces?

Do we have somebody here from OFAC?

Mr. NEWCOMB. Yes.

Mr. GEJDENSON. Please identify yourself.

Mr. NEWCOMB. My name is Rick Newcomb. I am director of Foreign Assets Control of the Treasury.

Mr. GEJDENSON. The staff tells me we should at least bring the bill up first. The staff director has the bill before him.

Mr. SCHEIBEL. This act may be cited as the Iraq Claims Act—

Mr. GEJDENSON. Without objection, the bill be considered as read, open for amendment. Thank you.

[The information appears in the appendix.]

Mr. GEJDENSON. Do you want to give us a little update of where we are on these two issues and also identify yourselves? Whoever is most comfortable. The first is the situation with Consarc and its \$6.4 million, and the second is what types of claimants would re-

ceive priority consideration under this legislation and how would this legislation affect members of the U.S. Armed Forces?

Ms. MIMS. Mr. Chairman, I have with me Ron Bettauer, from our legal office.

Mr. BETTAUER. Thank you, Mr. Chairman. In terms of what kind of claimants would receive priority consideration under this legislation, there was a provision in it which I presume is still in the bill that is before the committee that calls for members of the armed forces and other individual noncommercial claimants to have their claims adjudicated to the extent practical in advance and to get some level of payment in advance, assuming money is vested for that purpose.

This we think is rational, because not all the members of the armed forces involved in the conflict can go before the U.N. system with their claims. Beyond that, there would be many other claimants who would benefit from this bill.

Mr. GEJDENSON. And what would happen to Consarc if the higher courts uphold the present court finding that they should get their money back? Would they be taken care of to the full extent of the \$6.4 million?

Mr. BETTAUER. Well, I wouldn't care to speculate as to what would happen to Consarc, but my colleague from the Office—

Mr. GEJDENSON. Would he care to speculate?

Mr. BETTAUER [continuing]. Of Foreign Assets Control, which is the named Defendant in that case, may wish to give you a little update on that.

Mr. HOFFMAN. Mr. Chairman, I am Bill Hoffman. I am the chief counsel at foreign assets control of the Treasury. I shouldn't speculate about what would happen to Consarc. Consarc, under the administration's bill, would be a—would of course be eligible as a claimant.

And I think it is fair to point out that we essentially have a bankruptcy here and the reason that Consarc is in court in the first place is because we have not yet afforded American claimants a tribunal where all the claimants can put in their claims.

Mr. GEJDENSON. In a general situation where a claimant was found in court to have wrongfully been denied his possessions or revenue, would that claimant then generally be reimbursed in total? Even if, for instance, my money was grabbed during this and I came to court and said, "no, they shouldn't have taken my money, that was a mistake, and the court held it was a mistake," and then I won that under appeal. Wouldn't the government have to return my entire amount of money to me?

Mr. HOFFMAN. If you went all the way up and exhausted all. We are subject to the court's rulings.

Mr. GEJDENSON. So this legislation wouldn't affect the \$6.4 million of Consarc, if the court upholds their present legal position; is that correct?

Mr. HOFFMAN. That is correct, at the end of the litigation.

Mr. GEJDENSON. The end of the litigation, they still are supported by the court system, we in no way endanger their \$6.4 million.

Mr. BALLENGER. Mr. Chairman, would you yield?

Mr. GEJDENSON. I would be happy to yield.

Mr. BALLENGER. On that specific thing, I would like to ask a question also. I don't know the name, whether Consarc is the name of these people or not, but an eastern North Carolina outfit, this is prewar, had a contract with Iraq to send \$4 million worth of beans to Iraq. They shipped \$2 million, were paid. They shipped the second \$2 million, they were received, the money was transferred to the United States to pay for the second shipment, and it was frozen.

Now, I don't know what that demands—are you saying they have to go to court to get their money or—excuse me, you were about to raise your hand.

Mr. BETTAUER. No, I was going to answer that.

Mr. BALLENGER. OK, sure.

Mr. BETTAUER. Under this bill, prewar claimants are put into the group that can make claims before the Foreign Claims Settlement Commission. The assets that are frozen, to the extent a court doesn't find that something special applies, will all be equitably distributed among the prewar claimants, assuming the President decides to vest them.

Mr. BALLENGER. Then what are you saying, that they—since \$2 million was paid to them for a product that was delivered before the war, their \$2 million goes in the pot to split up with a whole bunch of people?

Mr. BETTAUER. No.

Mr. HOFFMAN. What they have received is theirs, that is no longer Iraqi money.

Mr. GEJDENSON. The second \$2 million.

Mr. BALLENGER. The second \$2 million.

Mr. HOFFMAN. This bill affords them a forum to bring that claim.

Mr. BALLENGER. But does it not take their \$2 million and put it in a pot for everybody to split up?

Mr. BETTAUER. It doesn't take money they have already got.

Mr. BALLENGER. No, no, I am talking about the second \$2 million.

Mr. GEJDENSON. You are all agreed. I will reclaim my time, and be happy to give the gentleman additional time.

What happens is that any money that the Federal Government is now holding would become a pot of money to settle claims; that the only special categories that are created are individuals and members of the armed services. They would get their first opportunity to have their claims settled. And then corporations would follow and some assessment, where the court—which I guess is a U.N. body?

Mr. BETTAUER. This assessment for the prewar claims would be a body of the Department of Justice.

Mr. GEJDENSON. OK. Justice Department organization, would then divide that among many different companies that have claims in addition to determining how legitimate the claim is.

Mr. BALLENGER. If the gentleman would yield?

Does that mean—that means that people who received injury, corporate or otherwise, during the war, would be allowed the same opportunity for people who actually had no money involved until after the war started and our Government froze it?

Mr. BETTAUER. Two separate categories created by this bill which exist, one is war claimants. Those are dealt with in the U.N. system and they don't have access to the pot. War claimants are supposed to have their payments of claims funded by a percentage of the export of Iraqi oil.

There is a whole system set up for that by the U.N. in Geneva, with many claims already filed. Then there are prewar claimants. That is not covered by the U.N. system. So we thought the fairest thing to do would be to take the frozen assets that are here domestically and reserve them for the prewar claimants, or the small group that is members of the military, combatants, who were excluded from the war claimants group. And they were excluded because the U.N. group said we are not going to put combatants into their recovery plan.

Mr. BALLENGER. But basically——

Mr. GEJDENSON. With the exception of soldiers, then, the prewar claims are going to be divided by people who have prewar claims, as a separate category.

Mr. BALLENGER. But still, the question comes to my mind in the fact that the money was paid for delivery of a product that was sold to them before the war, and the—I mean, their money is going in and they are not going to get back what they actually had at one time.

A portion, they are going to get some portion, who knows how small it will be.

Mr. WYNN. Will the gentleman yield?

Mr. BALLENGER. Yes.

Mr. WYNN. I guess a continuation, my question is: How long is the window open? In other words, how many people can come in with claims such as was just described and say, OK, I have a prewar claim? How many prewar claims before you decide how much on the dollar is going to be distributed to the claimants?

Mr. BETTAUER. There was an assessment done of how many prewar claims exist already by the Office of Foreign Assets Control. The Foreign Claims Settlement Commission of the Department of Justice would set up a rule with a window for people to apply. The programs are typically 3 years long. The bill, by incorporating another section, would tell them to set up their window, have their program, and then it is over.

Mr. WYNN. So anyone who gets in it within 3 years——

Mr. GEJDENSON. Qualified.

Mr. BETTAUER. They will set a filing period perhaps of 6 months. They will take 3 years to adjudicate the claims. They will—this is just hypothetically, they are not here today. They will—but they will set up a process after this legislation is adopted so that these claims can be dealt with reasonably expeditiously.

Mr. WYNN. My question is: So there will be no distribution until the window closes?

Mr. BETTAUER. I don't think there will be any distribution, not only until the filing window closes, but for a while after that.

Mr. WYNN. Until all of the cases are adjudicated.

Mr. GEJDENSON. Or heard at least.

Mr. BETTAUER. There can be some preliminary distribution of a small amount under this draft bill. You will see there is a \$10,000

payment that can go to people who get valid awards as they get those awards. That is not going to hit the bulk of the money, but some individuals who are having hard times might find that helpful.

The bulk of the money would probably have to stay there until you saw what the valid awards were so you could decide how to distribute them, the money.

Mr. GEJDENSON. And the advantage to all the claimants is that the faster we act, the better off they all are because of the time value of money. The longer it takes them to get back a portion of their money, the better off they are.

Mr. MANZULLO. Would the gentleman yield?

Mr. GEJDENSON. Happy to.

Mr. MANZULLO. You mentioned war claims. Could you define that?

Mr. BETTAUER. In U.N. parlance, those are claims that arise from Iraq's illegal invasion and occupation of Kuwait, and a whole body of law and decisions have been developed first by the Security Council and then by its new subsidiary body, the U.N. Compensation Commission, saying which claims are in, which claims are out and how that is defined.

Mr. MANZULLO. So you are saying that if somebody in Kuwait during the war suffered an injury or lost property, that Kuwaitis would have access to Iraq money that has been frozen in this country?

Mr. BETTAUER. No. They would have access to the U.N. funds.

Mr. MANZULLO. That is a separate pot?

Mr. BETTAUER. It is a separate pot. It will be derived from the tax—

Mr. GEJDENSON. Tax on oil.

Mr. BETTAUER. Tax on Iraqi oil.

Mr. MANZULLO. Are there two funds within this one here? This is for prewar claims only?

Mr. GEJDENSON. Will the gentleman yield?

There is about \$1.2 billion, as I understand it, in a pot of money that is frozen assets in this country that were Iraqi assets. At the outbreak of the war, the government froze those assets. There are about \$4 billion or \$5 billion worth of claims that will come against these assets.

Mr. MANZULLO. These are all prewar claims?

Mr. GEJDENSON. Prewar claims.

Mr. MANZULLO. Prewar claims only for this bill; is that correct?

Mr. GEJDENSON. Right. Nothing for what happened in the war. And then the only thing we are doing is we are giving priority so some small individuals, soldiers primarily, for that pot of money so they can get small amounts of money.

Mr. MANZULLO. But that occurred during the war.

Mr. GEJDENSON. But there is no provision in the U.N. process for these people to get compensated.

Mr. MANZULLO. Well, why was that left out? I mean, did anybody—

Mr. GEJDENSON. Because there are 113 countries or so making decisions, not just the United States.

Mr. BETTAUER. It is many countries, and again, the U.N. thought it only had jurisdiction over war claims. This was done pursuant to Chapter 7 of the U.N. charter. They didn't see that they had jurisdiction to do other claims.

And then when we tried to deal with how you develop the scenario in the meetings in Geneva for compensation, the other countries all thought that that scheme wasn't intended to compensate active members of the armed forces. So people who died for their country, or were injured, that is a small group. There may be 200 of those. They ought to be able to claim, too.

Mr. MANZULLO. So this would be claims of American soldiers who died—I am sorry, who were injured?

Mr. BETTAUER. Right.

Mr. MANZULLO. My question is: Why shouldn't Kuwait have to pay for that? The war was fought on behalf of that country, which has a lot more money, and use this money to pay these commercial claims.

Mr. GEJDENSON. We don't have any——

Mr. MANZULLO. Jurisdiction.

Mr. GEJDENSON [continuing]. Jurisdiction or legal ability to tell Kuwait to do that. It would be very nice if Kuwait decided to do that.

Mr. MANZULLO. No, I am just posing that, Sam. Because the issue here is we fought the war on behalf of Kuwait. This money has been frozen to pay American entrepreneurs. There are claims that have arisen because of injuries to our soldiers. So, why is Kuwait getting off the hook?

Mr. BETTAUER. The money is for American entrepreneurs, but individuals who were injured before, who lost property, who had a contract claim, whether business or not. But Kuwait wasn't responsible for the invasion and occupation. It was Iraq.

Mr. MANZULLO. No, we were responsible for the rescue, and they have a lot more money than we do.

Mr. BETTAUER. We think that Iraq should be the one who is paying for the damages to Kuwait, to us, and to the other countries. And the administration intends to enforce its rights under the U.N. resolution against Iraq and not make Kuwait——

Mr. MANZULLO. I understand. But you have no way of knowing how much money will be left over for American business claimants after GIs pursue their claims against this fund; is that correct?

Mr. GEJDENSON. The gentleman is correct. But if we don't provide for some protection for the GIs in this piece of legislation, then the GIs will be precluded from any protection.

Mr. BALLENGER. Would the gentleman yield?

Mr. MANZULLO. I appreciate that, thank you.

Mr. BALLENGER. My question comes up, since Consarc, and I don't know who Consarc is or what kind of an organization they are, but since they evidently have a special claim, have gone to court, does that put them ahead of all the other people in line?

Mr. GEJDENSON. If they sustain their present finding by the court, then they will end up ahead of everybody else. And if some other company is able to get a court case settled before we get this to the President's desk, they may be able to carve something out as well.

And it seems all the claimants' benefit, the faster we act, the fairer the distribution. Rather than having some funds diverted for individual companies and then ending up with others just as deserving companies or smaller companies, who don't have the resources, of being precluded from having their situation rectified to any degree.

Mr. BALLENGER. If I may, are there other corporations like Consarc, Consort, whatever his name is, that have gone through the courts and are in the same situation?

Mr. HOFFMAN. We have—there is nothing quite like Consarc, because the Consarc case is a very specific, I was going to say peculiar, but it rests on its own facts. Consarc was defrauded by the Iraqis, as Judge Sporkin found, and they were never—they never shipped the goods that they produced for the Iraqis. So it is a—they are in a rather different position from your person who shipped the beans and actually, you know, actually parted with the goods.

Mr. BALLENGER. Well, did Consarc—was it a product that somebody else could buy?

Mr. HOFFMAN. Well, we are talking about furnaces which the Iraqis originally said were for producing prosthetic devices and it later developed they were for the Iraqi nuclear industry. And so the export license was jerked before they could export them. And they did sell one to a Japanese company.

Mr. BALLENGER. So they got their money in spite of the fact that they are going to court to get some more money from—I mean, the Iraqis or Kuwaitis or whatever. In other words, they got their dough by selling it to somebody else. This guy's beans are gone, they were in Iraq and got paid for and they are not going to get their money, as Consarc, who actually went to court to collect the second time around.

Mr. HOFFMAN. Well, let me just say, I don't think it is appropriate for me to discuss too much the litigation, but the government has appealed the Consarc ruling. We don't have a litigation schedule yet. But as I said at the outset, we are dealing here essentially with a bankruptcy situation.

Mr. BALLENGER. Is Consarc bankrupt?

Mr. HOFFMAN. No, no. I mean Iraq is bankrupt at this point. We have got as many assets as we are going to have from Iraq for the foreseeable future. The rest of the world has enormous claims on Iraq and this pot is it. So we have got a zero sum game. To the extent that we tell people go to court, we are going to have as many judges as we have cases deciding the equities of a particular case. If we set up a tribunal, we have got a uniform means of dealing with it.

Mr. GEJDENSON. If there are no further questions or comments, all those in favor of the bill say aye.

Opposed, say nay.

The ayes have it, the bill is passed.

The committee is adjourned.

[Whereupon, at 2:09 p.m., the subcommittee was adjourned.]

MARKUP OF H.CON.RES. 138, WITH RESPECT TO SAUDI ARABIA AND THE GATT, AND H. CON. RES. 175, CONCERNING THE ARAB LEAGUE BOYCOTT OF ISRAEL

TUESDAY, NOVEMBER 16, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON ECONOMIC POLICY,
TRADE AND ENVIRONMENT,
Washington, DC.

The subcommittee met, pursuant to call, at 1:15 p.m., in room 2172, Rayburn House Office Building, Hon. Sam Gejdenson (chairman of the subcommittee) presiding.

Mr. GEJDENSON. Prior to the Antarctica hearing, the subcommittee will markup H. Con. Res. 138 and H. Con. Res. 175, both concerning the Arab League Boycott of Israel. These resolutions come at an important time in the Middle East. The Palestinian and Israeli peace accord signals the beginning of new Arab cooperation in the region. If the Arab countries continue to boycott American corporations that do business in Israel, this is completely unacceptable. American soldiers gave their lives in the sovereignty of Saudi Arabia. Yet, boycott requests from Saudi Arabia increased steadily the first three-quarters of this year. To add insult to injury, Saudi Arabia now wants the United States to support its admission to GATT.

H. Con. Res. 138, which I introduced, expresses the sense of Congress that the United States should oppose Saudi Arabian application to join the GATT because Saudi Arabia formally and publicly renounces its participation in the secondary and tertiary Arab boycott. Saudi Arabia should eventually be a member of GATT, but only after it stops discriminating against American firms that do business with Israel.

H. Con. Res. 175, introduced by Representative Peter Deutsch, properly indicates continuation of the Arab boycott as a severe impediment to the economic prosperity of the entire Middle East at the cost of American firms. It also indicates a strong desire of Congress for a quick and complete dismantling of the Arab boycott. Our bilateral relationship with Arab states will suffer as long as the boycott continues.

I would like to commend Congressman Deutsch for the introduction of the resolution and for his leadership in opposing the Arab Boycott. Any comments? Mr. Roth.

Mr. ROTH. Mr. Chairman, I thank you, very much, for yielding to me. Let me join with you and our colleagues in saying that the time has come to end the Arab Boycott of Israel. With the recent breakthrough between Israel and the PLO, at long last there is a real chance of peace. But the Arab League Boycott is an obstacle. On a bipartisan basis, our subcommittee is strongly opposed to the boycott. Today, at this critical juncture in the peace talks, we are restating our belief that ending the boycott would be a step toward peace. So, I join in sending these measures forward to the full House, and I join with you, Mr. Chairman, in congratulating and thanking Mr. Deutsch for the initiative.

Mr. GEJDENSON. Thank you, Mr. Roth. We will now consider—

Mr. ROTH. Mr. Chairman, I can tell you I have, and thank Mr. Deutsch, and he is one tough cookie to deal with. So, I have new respect for Mr. Deutsch.

Mr. GEJDENSON. Thank you. We will now consider H. Con. Res. 138. Would the staff clerk please read the resolution?

The CLERK. H. Con. Res. 138, expressing the sense of the Congress with respect—

Mr. GEJDENSON. The resolution will be considered as read. Without objection, any further reading of the resolution will be dispensed with and be put in the record.

[H. Con. Res. 138 appears in the appendix.]

Mr. GEJDENSON. Are there any amendments to the resolution?

[No response.]

Mr. GEJDENSON. If there are no amendments or questions, then final passage. All those in favor, please signify by saying aye.

[Chorus of ayes.]

Mr. GEJDENSON. Opposed, say no.

[No response.]

Mr. GEJDENSON. The resolution is adopted. We will now consider H. Con. Res. 175. Would the staff clerk please read the resolution.

The CLERK. H. Con. Res. 175—

Mr. GEJDENSON. The resolution will be considered as read. Without objection, any further reading of the resolution will be dispensed with and will be printed in the record.

[H. Con. Res. 175 appears in the appendix.]

Mr. GEJDENSON. Mr. Manzullo would like a copy of the resolution. Are there any amendments to the resolution?

[No response.]

Mr. GEJDENSON. If there are no amendments to the resolution, then final passage. All those in favor signify by saying aye.

[Chorus of ayes.]

Mr. GEJDENSON. All those opposed, say nay.

[No response.]

Mr. GEJDENSON. The ayes have it. The resolution is adopted. We will stand in recess until 1:30 in time for the hearing.

[Whereupon, at 1:20 p.m., the subcommittee recessed, to reconvene at 1:30 p.m., the same day.]

MARKUP OF THE ENVIRONMENTAL EXPORT PROMOTION ACT OF 1994

TUESDAY, FEBRUARY 8, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON ECONOMIC POLICY,
TRADE AND ENVIRONMENT,
Washington, DC.

The subcommittee met, pursuant to call, at 2:43 p.m., in room 2172, Rayburn House Office Building, Hon. Sam Gejdenson (chairman of the subcommittee) presiding.

Mr. GEJDENSON. Last August, the subcommittee held a hearing on U.S. environmental exports and the need to focus our Government's export promotion resources on the governmental sector—environmental sector. Unlike many of the subcommittees, hearing the government and private sector witnesses actually arrived at a strikingly similar conclusion.

First, the United States had a \$4 billion trade surplus in the environmental sector in 1990 but our major competitors are gaining fast. The American environmental industry must not be allowed to lose its competitive position.

Second, environmental exports not only help American firms and American workers but also help protect the global environment. We all benefit from the diffusion of state-of-the-art environmental technology to developing countries.

Third, the international market for environmental goods and services is rapidly growing. It currently stands at \$270 billion annually and is likely to grow to \$400 to \$600 billion by the end of the decade. If U.S. firms manage to capture 20 percent of the anticipated market in this overseas environmental area, an estimated 300,000 new jobs will be created over the next 7 years.

Based on these three conclusions I have drafted the "Environmental Export Promotion Act" which we will mark up today. I am pleased that Representative Studds, Chairman of the Merchant Marine and Fisheries Committee, and Representative Liz Furse has joined me in introducing this legislation. I commend them for their leadership on the enviro-tech issue.

The Gejdenson-Studds-Furse legislation will fine tune the U.S. Government export promotion efforts to increase environmental exports. The bill is in large part drawn from recommendations made by the administration in its November 1993 report on this issue.

The legislation has six primary components. Section A, establish an environmental technology trade advisory committee to guide

Trade Promotion Coordinating Committee, the TPCC, in carrying out its export promotion efforts in the environmental sector.

The section also requires the annual designation of five priority countries whose markets have the greatest potential for exports of U.S. environmental technologies, goods and services. A plan to help U.S. industry capture those five markets must then be developed.

Section B requires the administration to place environmental specialists in five priority markets targeted under section A. These specialists will go to bat for U.S. environmental firms. This section also requires the staff of the Commerce Department in one-stop shopping experts be trained in environmental technologies.

Furthermore, section B authorizes international environmental initiatives to encourage other regions to adopt American style environmental standards by use of environmental products.

Finally, the section establishes an environmental technology project advocacy calendar which will contain an updated list of all major overseas environmental projects for possible interest to U.S. exporters. This legislation will help ensure that American environmental companies, particularly small ones and medium ones, remain on the cutting edge of the international environmental market. It will also help create export-related jobs here at home.

I urge my colleagues to support its passage.

Mrs. Meyers I think may have a statement?

Ms. CANTWELL. Yes. Ms. Meyers.

Mrs. MEYERS. Yes. Mr. Chairman, I would ask that the statement by Mr. Roth be entered into the record. And he is strongly supportive of the bill, congratulates you on this leadership in bringing this issue forward.

[The prepared statement of Mr. Roth appears in the appendix.]

Mr. GEJDENSON. Are you going to do it?

Ms. CANTWELL. Thank you, Mr. Chairman. I commend Mr. Gejdenson for your commitment to the environmental community and to this legislation. We have a wonderful opportunity today to help the U.S. environmental industry begin to compete internationally.

Over the last few years we have seen an explosion in the number of environmental technology product and service firms. And for the markets those firms are expanding very rapidly.

The worldwide environmental technology market is expected to grow from approximately 270 billion today to as much as 600 billion by the year 2000. Washington State is a national leader in promoting its environmental technology industries. We have more than 450 environmental firms that employ 27,000 people. And boast annual revenues of more than \$3 billion from these firms that range from solid and hazardous waste management to lab testing and analysis.

In 1991 Washington State enviro-tech firms joined with state and local governments to create the Washington Environmental Industry Association. This industry is very anxious in supporting and moving this legislation through Congress.

Just one example of a small company, Pintech Environmental is why we need this bill. Over the last 5 years they have doubled their employment and expanded their scope of services. In recent meetings I have been told by the firm that for them, though, to

maximize opportunities in the international marketplace they need the resources and assistance of this legislation.

This bill is strongly supported by the environmental community and environmental companies. It incorporates the best steps we could take today to help the industry and contribute both to a national, a healthy national economy and a healthy global environment.

Thank you.

Mr. GEJDENSON. No further statements. Will the Staff Director read the bill?

Mr. SCHEIBEL. "To amend the Export Enhancement Act of 1988—"

Mr. GEJDENSON. Move the bill be considered as read. Without objection any further reading of the bill will be dispensed with and will be printed in the record.

Are there any amendments to the bill?

[No response.]

Mr. GEJDENSON. There are no amendments.

The question is on final passage. All those in favor say aye.

[Chorus of ayes.]

Mr. GEJDENSON. All those opposed say nay.

[No response.]

Mr. GEJDENSON. The legislation is adopted.

The committee stands adjourned.

[Whereupon, at 2:45 p.m., the subcommittee was adjourned.]



MARKUP OF THE ADMINISTRATION ACT OF 1994

THURSDAY, MARCH 10, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON ECONOMIC POLICY,
TRADE AND ENVIRONMENT,
Washington, DC.

The subcommittee met, pursuant to call, at 1:31 p.m., in room 2172, Rayburn House Office Building, Hon. Sam Gejdenson (chairman of the subcommittee) presiding.

Mr. GEJDENSON. The Subcommittee on Economic Policy, Trade and Environment meets today to consider a draft of the Export Administration Act of 1994. Now this bill would fundamentally reform export control systems to make it more efficient and better adapted to control the proliferation of weapons of mass destruction.

Let me say at the outset that this effort has been and will continue to be one of a bipartisan nature. I have worked with my ranking minority member, Toby Roth, not only in a cooperative way, but in true partnership. The bill that members have before them today reflects that partnership and his tremendous efforts on behalf of this legislation.

I also have expectations that this subcommittee will continue to work closely with the administration to produce responsible meaningful reforms. Clearly there are some differences between the administration's bill and our mark-up vehicle. However, the administration is in agreement that legislation is vital, and to its credit has produced a bill of its own. Moreover, there is a basic consensus on the issues that we must address, if not on the precise method of addressing each of them.

The bill in front of you represents the work of a number of people. It incorporates many of the concepts set out in legislation introduced by Mr. Roth and Mr. Oberstar. It also incorporates legislation introduced by Ms. Cantwell, Mr. Manzullo, Mr. Engel, Mr. Edwards, and Mr. Wyden.

The provision on commodity jurisdiction has been in two conference reports, and is derived from legislation thoughtfully developed and effectively advocated by Mr. Johnston. The sanctions section and the separate titles on nuclear nonproliferation draw heavily from legislation introduced by our colleague Tom Lantos.

Those provisions strengthen this bill, and I appreciate his excellent work in that area. Our bill also adopts many of the ideas of the administration's bill. It is obvious that much thought and hard work went into the administration's proposal. And again, we appre-

ciate the very positive nature of the relationship. And we pledge to continue in that vein to come up with an even better document by working on both of proposals.

The subcommittee's markup vehicle would accomplish a number of important objectives. It would increase the effectiveness of export controls by emphasizing multilateral cooperation, imposing discipline on the use of unilateral controls, and provide incentives for the participation by others in multilateral regimes.

The nonproliferation export control regimes are not perfect, but they serve a very significant function and must be given the opportunity to mature. This bill protects the sanctity of those regimes. And we hope to see this administration take a leading effort in developing more multilateral regimes to take care of our own and other countries' national security.

At the same time, unless controls are multilateral, they typically do not achieve the nonproliferation objectives, but do disadvantage U.S. exporters. The procedural discipline imposed by the bill on unilateral controls is virtually identical to that imposed on controls of agricultural exports. We should not single out high technology exports as the items of choice for unilateral control.

The bill also harmonizes and toughens the sanctions imposed for violation of export controls on components of nuclear, chemical, and biological weapons, and the missiles that deliver them. It achieves a measure of consistency in the sanctions to be imposed, the conditions under which they will be imposed, and the process to be employed in imposing them. Individuals here and abroad must know that the United States will not tolerate the exports of components of weapons of mass destruction to those who would proliferate them.

The bill would reform the export licensing process by establishing deadlines for license review and additional streamlining. All export licenses would have to be reviewed and responded to within 30 days. We cannot allow endless discussions among mid-level bureaucrats to impede the ability of American companies to compete effectively overseas.

Vice President Gore has time and time again talked about a government that deals with its citizens and its users as customers, and tries to respond to their needs. Nothing can be further from the needs of America and its industry than to have a process that goes on for half a year or more in export licensing.

We must deny dual-use items to terrorist countries. They are not among the family of nations and cannot be treated as if they are. We must also increase the transparency of the export control systems. Exporters have a right to know where they can sell, where they cannot, and under what circumstances. It is not a lot to ask of this government.

This bill is a product of five hearings held between June and November of last year, and countless additional hearings, briefings and investigations held in previous years. We have talked formally and informally with numerous individuals and groups.

Quite obviously, this is not an easy issue to take on: and just as obviously, there are no magical answers. But given the changes in the national security threat posed to the United States and the significance of exports to our economic well-being and therefore to our

national security, this system cannot stand as it is. The current system demands reform.

And again I would like to thank all of our colleagues for their assistance, all taking part in this bill. This is not a product of any one member, not the chairman and not the ranking member, but all of the members of this committee. And I want to personally thank them for the effort that they have put in. And again to thank the administration for working so closely with us.

Mr. Roth.

Mr. ROTH. Well, thank you, Mr. Chairman. Mr. Chairman, first let me compliment you and your staff, and the minority and the majority staff, for the fine work that they have done. And especially Ed Rice and John Chivel, who have been able to work these differences out between you and myself, Mr. Chairman, in a most amiable way. And we appreciate that very much.

As you have mentioned, Mr. Chairman, the entire committee has worked on this legislation. We have worked on this bill for over a year. Quite frankly, it has been a number of years. I talked yesterday to Don Bonker, and I remember when he was here on the Hill all of those years. And this is the bill that we have been looking for. So I am delighted with this legislation today.

And today, we have a bill that all members can support. I am particularly pleased that you have incorporated, Mr. Chairman, my bill H.R. 3412. My bill has support of a broad coalition, more than 130 high tech companies and groups. They represent America's economic future. And they are now supporting legislation that we have before us.

At the beginning of this Congress, we set a very specific goal for ourselves to make fundamental changes, changes that clear away the old cold war restrictions that are irrelevant and useless in today's world. Changes that will help our high tech companies win in the global markets. And changes that strengthen our efforts to stop proliferation.

The current law is an out of date artifact of the cold war. The current system has exactly the wrong effect, impeding the development of free markets around the world, retarding the spread of democracy and the free flow of ideas. Stunting our economic growth, and costing American jobs.

The bottom line is that today's export control system costs us \$30 billion a year. Yes, \$30 billion a year in lost exports in each and every year. This translates into 600,000 jobs, jobs that could go to American workers, which today are going to our competitors because they are already ahead of us in shedding their old export control policies.

So this issue is bigger than NAFTA, and bigger than GATT. Mr. Chairman, what we are doing today is bringing a dose of reality to a system that simply is out of step with today's world. Our bill reflects reality. Our bill embraces the future. Our bill strengthens our economy. Our bill furthers the cause of free markets and democracy. And our bill will create jobs for American workers.

So let us move this bill forward, bring it to the House, and get the bill signed into law. And we will have something truly important for our country and our Nation's workers.

Mr. GEJDENSON. Thank you. Mr. Johnston.

Mr. JOHNSTON. Mr. Chairman, I have a statement. It is the same statement that I give every year. And even though I may become stale, when I look at my statement it is still relevant today as it was in 1990.

An editorial in the November 22 edition of *Business Week* clearly defines the challenges facing us in the post-cold war era, and I quote: "The real question before Congress is whether the United States has the guts and vision to replace the deadly geopolitical confrontation of the cold war with the new geoeconomic competition based on open market, free trade, and regional alliances."

They go on to say that our job in Congress is to build a new institutional architecture for international relations.

Mr. Chairman, this is the task before us today. The cold war is over, but yet our control structures are still aligned for an East-West confrontation. Today we must finally recognize that the security apparatus of the cold war is obsolete, and reform is needed to create a new security structure to respond to new demands.

But simply the goal is to build higher fences around better targets. We must encourage trade between responsible allies while devoting our security resources to contain a diverse group of national and international adversaries.

I think that we have all learned that unilateral controls are highly ineffective and unfairly punish U.S. industry. Today we must begin the process of building a new set of multinational controls to protect our national security interests while releasing U.S. exports from a bureaucratic licensing strangle.

Mr. Chairman, administrations change, but the bureaucracy does not. Your bill makes a clear break from the past and sets a new course for the future. And I commend you for a job well done as well as Congressman Roth. Mr. Chairman, I would like to also thank you for addressing that you mentioned of commodity jurisdiction. As you know, in 1991, we found hard to produce a compromise in the Foreign Affairs Committee and with the Senate. In the 1990 and in the 1992 conference reports, we included language to define a clear method of distinguishing dual use technology controlled by the Department of Commerce from munitions technology controlled by the State Department. We also set out a process for resolving interdepartmental disputes.

Mr. Chairman, I thank you for including this important provision in your subcommittee mark with regard to commodity jurisdiction. The administration's proposal is still mired in cold war politics. And I appreciate your help in seeing that the hard fought compromise of 1990 becomes law in 1994.

Thank you very much.

Mr. GEJDENSON. Thank you. Mr. Manzullo.

Mr. MANZULLO. Thank you, Mr. Chairman. It is a pleasure to be here this afternoon. Every since I have been appointed to this subcommittee, there have been so many distinct challenges which regard to the opening of world markets.

The congressional district that I represent, the 16th District of Illinois, probably is the most highly industrialized per capita congressional district in this Nation. The city of Rockford with 980 factories and a city with the population of 160,000 is responsible for one-half of Illinois' manufactured exports. Automobile fasteners,

tool and die machines, the aerospace industry, and now emerging high tech.

There was an experience that one of the factories had a few years ago where it built a \$2 million machine that was driven by a computer. Because of obsolete controls by the Department of Commerce, State, and Defense, that machine was held up in the licensing process for 2 years. And the company had to almost eat that machine as opposed to being able to sell it overseas. Fortunately, there was an opening somewhere in a bureaucrat's office, and that machine was eventually able to leave this country.

The amendment that I will be introducing later on in this hearing is aimed directly at expanding and exploiting these markets overseas, so that commerce in this country can move more freely and in greater amounts.

Mr. GEJDENSON. Thank you.

Ms. Cantwell, who has really done some extraordinary work in the area of computers and software, and particularly encryption. Ms. Cantwell.

Ms. CANTWELL. Thank you, Mr. Chairman. And I would like to take this opportunity to commend Chairman Gejdenson and Congressman Roth for getting us to where we are today. And clearly, their staffs have played a key role in helping to develop this legislation.

They have taken a very complicated U.S. policy protected by layers and layers of bureaucracy and Federal regulation, and produced a bill that truly reforms the antiquated Export Administration Act.

The bill before us creates an export control regime that is transparent, consistence, accountable, and establishes a timely review of export license and applications. At the same time, the bill preserves and protects the ability of the United States to control the export of sensitive dual use items for national security reasons.

We can look back at the relative success of past export control regimes with a sense of accomplishment. Export controls were an indispensable tool in fighting the cold war and limiting the spread of weapons of mass destruction.

Clearly, U.S. export control policies and U.S. leadership in coordinating international efforts have resulted in a safer world. The basic guiding principles of nonproliferation and controlling sensitive technology must be maintained.

Yet the demands of the competitive international marketplace and new geopolitical realities require that we become more creative, more efficient, and more flexible in our export control regime. I believe the bill before us today does just that.

When Vice President Gore introduced the National Performance Review last year, he basically said that this report reflects the determination of the entire administration to cut spending, red tape, and bureaucracy, and dramatically change and improve the way government works.

We must fundamentally change the way that government works. If we cannot reach this basic fundamental reform on a bureaucracy that stretches through the Department of Commerce, State, Defense, Energy, CIA, NSA, Customs, and scores of other offices, then we will never accomplish this goal.

I support this legislation, and look forward to working with the chairman and the ranking member to secure its passage. I would like to take just a moment to comment on a provision of the bill that I believe responds to a very real economic crisis here at home. I am referring to the export restrictions currently placed on generally available software.

Currently, U.S. export control policy prohibits American software companies from exporting software products with encryption capabilities that meet current international standards. These software products are generally available, including familiar names like WordPerfect, Lotus, and Microsoft, which you can buy right off the shelf in most retail outlets.

Encryption is a technology that enables businesses and individuals to protect their information against unauthorized disclosure, theft, and alteration. Millions of encryption products have already been sold, and the worldwide demand is soaring as a number of corporate and private computer networks grow.

It is truly ironic, Mr. Chairman, that the current law allows a foreign country to import software with encryption into the United States to compete against American companies, even as U.S. software companies are being told that they cannot export their products abroad.

The United States cannot successfully unilaterally control what COCOM and many other countries have already decontrolled. We cannot turn back the clock at a time when technology was more controllable. Trying to stop the sale and the use of software with encryption technology is like trying to dam a river using only a chain link fence. No matter how hard you work, you will not be able to stop its flow.

I believe that this bill addresses this issue. And I encourage the rest of the members to work forward to the passage of this legislation. And I appreciate the Chairman's time and energies in this effort. Thank you.

Mr. GEJDENSON. Thank you.

Mrs. Meyers.

Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman.

I want to commend you and the ranking member and other members here who had a major role in crafting this legislation. Some apologies, I must say.

This member had not had an opportunity to do much work on this legislation.

Mr. GEJDENSON. Will the gentleman yield?

I would say the gentleman has done enough work in previous years to carry him through for several into the future.

Mr. BEREUTER. I thank you for your kindness.

Mr. GEJDENSON. And I want to express my appreciation for his work.

Mr. BEREUTER. Now that the interstate banking bill is out of the way, I hope between now and full committee and the floor have a bit more time to scrutinize what you have done.

But on faith, I want to commend you for the work that you have done, because I think the direction that—the direction we have taken in the past indicates to me that we have the same general

goals in mind, and that is to try to reduce the unnecessary impediments to the flow of exports.

And we heard Mr. Johnson speak about the frustration we have all shared concerning the interagency squabbles that have delayed so many of our exports, to the point that they are nearly obsolete by the time they are approved.

With all those positive things I have said, I need to say that the administration has reminded me and requested that I say today that they do oppose certain software encryption items in here. And I think it is fairly easy for me to say with confidence that unless they are changed, they will provoke a veto ultimately. Those can be changed between here and full committee, or between the conference, but they are elements that must be changed there. And we can work on that, hopefully, in a fashion that brings us the right results, and I look forward to the markup.

Thank you, Mr. Chairman.

Mr. GEJDENSON. It is nice to have Mr. Bereuter here continuing to represent the administration. [Laughter.]

No matter—no matter what political party is in the White House. [Laughter.]

And I would seriously just say that, in the years that I have worked on this issue as a member of the subcommittee first, and as chairman, Mr. Bereuter's efforts have been serious, have been informed, and I would say that we agreed about 95 percent of the time, and we had very thoughtful fights the other 5, but it has always been a privilege to work with him.

Next, Mr. Fingerhut.

Mr. FINGERHUT. I thank you, Mr. Chairman, and I just simply want to associate myself with all the remarks that have been made about the importance of this legislation, and the work that you have done, and this committee has done to bring us to this point.

I remember a year ago when we passed the 1-year extension, with the promise that—the existing law, with the promise that we were going to do substantial reform. I was a bit skeptical, having in the previous life in the state legislature been involved in a number of efforts where we extended things with promises of reform, and never did it. But this is the delivering of a promise that I think is very significant economically to the future of this country.

The administration has emphasized, correctly, I believe, the importance of export in our future, economic growth, and this is a critical component of it.

I must say that, unlike the administration, however, I strongly support the provisions with respect to encryption materials, technology, that is embodied in this legislation and that was sponsored by my friend, Ms. Cantwell, in separate legislation that you have included in this markup. I find it, I guess, somewhat amusing that we would have the message delivered by Mr. Bereuter. Maybe he can send a message back to the administration that this side of the aisle fully supports the legislation that Ms. Cantwell has put forward, and we hope we can work something out to make sure that this is an essential part of the legislation.

I have specifically been contacted by constituents, businesses, who are specifically affected by this area of legislation. They know that what they could sell overseas is being sold everyday by busi-

nesses all over the country. Their big joke is that all they have go to do is go onto the street corners in Southeast Asia and they can find the same things that they are being prohibited from selling by our laws.

So I certainly hope that we can stop—we can cut through the messages and get something done on this issue. I strongly support the legislation, strongly support the encryption section, and I commend the Chairman and the committee for bringing us to this point.

Mr. GEJDENSON. Thank you.

The gentleman from Maryland, Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman.

I too would like to express my congratulation to you and the other members of the committee for the hard work that has been put in, in putting this bill together. I think it is a significant movement in the right direction, and it will streamline and make our export control laws more effective.

I would just like to say that, while I think the bill on the whole is moving in the right direction, I have some concern about the transparency provisions. It seems to me that the recent Ames situation makes it clear, and I am not unmindful of Mr. Johnson's comments, but it does make it clear that we are not yet completely out of the cold war. And so I hope that these particular sections, while I expect they will be implemented, will be watched closely, because this could prove to be a problem area in the future.

But on the whole, Mr. Chairman, I am certainly very pleased with the bill and look forward to supporting it.

Mr. GEJDENSON. Thank you. Ms. McKinney.

Ms. MCKINNEY. Mr. Chairman, I would just like to say thank you for allowing me to commend you on your hard work on this bill, and I do that, and I look forward to supporting it. Thank you.

Mr. GEJDENSON. Thank you.

We will now consider the subcommittee draft known as the Export Administration Act of 1994. The staff director will read the bill.

Mr. SCHEIBEL. This act may be cited as the Export Administration Act of 1994. Table of Contents—

Mr. GEJDENSON. Without objection, the bill will be considered as read.

[The subcommittee's draft bill appears in the appendix.]

Are there any amendments?

Mr. MANZULLO. I have an amendment.

Mr. GEJDENSON. Mr. Manzullo. Is the amendment at the desk?

Mr. MANZULLO. The amendment is at the desk.

Mr. GEJDENSON. Do all members have a copy of the amendment? They are in the process of getting them.

Will the staff director please read the amendment?

Mr. SCHEIBEL. Section 104(a)(1): Insert "and subject to paragraph (2)(B)——

Mr. MANZULLO. I would ask that the amendment be allowed as——

Mr. GEJDENSON. Without objection, the amendment will be considered as read.

[The amendment by Mr. Manzullo appears in the appendix.]

Mr. GEJDENSON. Mr. Manzullo will explain his amendment.

Mr. MANZULLO. Thank you, Mr. Chairman.

I want to first think you and your staff for your cooperation in working toward this compromise that we have today.

I originally supported and still continue to endorse the total decontrol on computer-related exports with the exception of those exports to sanction countries. Study after study demonstrates that computers are increasingly irrelevant in controlling the spread of weapons of mass destruction.

With over 150 billion semiconductor chips manufactured annually worldwide, and with the close intercollection of computer technology throughout our modern society, it is time to redirect the focus of export controls on technologies more directly linked to the production of weapons of mass destruction, and that is why I strongly support the rest of this bill.

My amendment, Mr. Chairman, would provide for distribution licenses for computer exports above the decontrol level, but below the supercomputer level for every country in the world except sanction nations.

Recently, the administration decontrolled computer exports up to the 260-M tops levels, which is equivalent to an IBM work station. The supercomputer level has been worked out with our allies, mainly, Japan, to 1500-M tops. The real world application of my amendment would require distribution licenses for those computers with the power of between 260 and 1500-M tops to emerging democracies of Eastern Europe, the former Soviet Union and also China. Distribution licenses would simply require the Bureau of Export Administration spend 30 days investigating first time foreign customers buying a specific U.S. product.

Once BEXA certifies the end user, a U.S. exporter can ship unlimited amounts of their approved products to a specific person or company.

This is much different and welcomed change from current regulations. Right now U.S. exporters must obtain permission from the BEXA to ship products over the 260-M tops level each time they wish to sell to foreign customers under an individually validated license, which can take weeks, if not months, to approve.

Adopting my amendment would break the log jam of red tape at BEXA, and free up resources to target problems truly of concern to stopping the proliferation of weapons of mass destruction.

My amendment does not impact supercomputers above the 1500-M tops levels for which individually validated license would still be required.

My amendment also does not impact other sections of the bill, which I strongly support, that remove controls on mass market computer equipment. If the export quantity of a specific computer model reaches above 100,000 units over a 12-month period, then no export license, including distribution license, would be required.

This amendment reaffirms current law in that no export license would be granted for terrorist or embargoed countries. The amendment defines them as "sanctioned" countries. No licenses would be approved for bad end user countries such as Cuba, North Korea, Libya, Syria, Sudan, Iraq, Iran, or Yugoslavia, or for those individuals or companies denied trading privileges because they are in-

volved in the development or production of weapons of mass destruction.

The second part my amendment asks for a National Academy of Sciences study into the policy implications of total decontrol of computer technology. This study would take place over a 9-month period; gathering the best minds on this complex issue, to come to some conclusions on this subject. Recommendations from this study could form the basis of a review of export controls during the next Congress.

This amendment has broad-base support among many industries and companies, particularly those interested in export control reform, including the Electronic Industries Association.

I want to particularly thank the help and patience of David Calabrese from EIA in working with members and staff of the subcommittee in drafting this good compromise. I also, Mr. Chairman, want to thank you, and Mr. Roth, and the staffs of both of your offices for coming up with language that is acceptable.

Mr. GEJDENSON. Thank you.

Are there any other comments? If not we will now consider—Mr. Roth.

Mr. ROTH. Mr. Chairman, I would like to add quickly that I think Mr. Manzullo has a good amendment. I have studied this amendment, Mr. Chairman and members, and I think it improves the bill. In today's world, it makes no sense to try to control exports of computers for civilian purposes.

First, they are literally not controllable; and, second, controlling computers is irrelevant to controlling weapons of mass destruction, as our subcommittee learned in our hearings.

So I think, Mr. Chairman, after looking at this amendment, I think it improves the bill, and I think we should accept it.

Mr. GEJDENSON. Thank you.

On Mr. Roth's recommendation, if there are no further comments, we will now consider the amendment.

All in favor, say aye.

[Chorus of ayes.]

Mr. GEJDENSON. Those opposed, say nay.

[No response.]

Mr. GEJDENSON. The ayes have it. The amendment is agreed to.

At this time I would like to offer a technical amendment to the subcommittee draft. The amendment adds a finding and a policy statement from current law which inadvertently was omitted from the draft before the committee. The finding states the minimization of restrictions agricultural exports is of critical importance to the maintenance of a sound agricultural sector. The policy statement indicates that it is U.S. policy to minimize restrictions on the export of agricultural commodities and products.

And if there is no other comment at this time, I would like to move the amendment.

All those in favor, say aye.

[Chorus of ayes.]

Mr. GEJDENSON. All those opposed, say nay.

[No response.]

Mr. GEJDENSON. The ayes have it.

[The amendment of Mr. Gejdenson appears in the appendix.]

I would now like, unless there are any further comments, move the bill.

I move the subcommittee draft of the Export Administration Act be considered as amendment.

All those in favor, say aye.

[Chorus of ayes.]

Mr. GEJDENSON. All those opposed, say nay.

[No response.]

Mr. GEJDENSON. The ayes have it. The subcommittee draft of the Export Administration Act of 1994, as amended, will be forwarded to the full committee.

I would like to thank both the minority and majority members of the committee who worked together tirelessly on this issue for an extended period of time, and, of course, Ed Rice and John Scheibel, who have led the effort. Thank you.

The committee is adjourned.

[Whereupon, at 2:02 p.m., the subcommittee was adjourned.]



APPENDIX

103D CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSTON of Florida (for himself, _____) introduced the following bill; which was referred to the Committee on _____

A BILL

To support the transition to nonracial democracy in South Africa.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "South African Demo-
5 cratic Transition Support Act of 1993".

6 SEC. 2. FINDINGS.

7 The Congress makes the following findings:

8 (1) After decades of apartheid, South Africa
9 has entered a new era which presents a historic op-

2 democratic future.

3 (2) Through broad and open negotiations, the
4 parties in South Africa have reached a landmark
5 agreement on the future of their country. This
6 agreement includes the establishment of a Transi-
7 tional Executive Council and the setting of a date
8 for nonracial elections.

9 (3) The international community has a vital in-
10 terest in supporting the transition from apartheid
11 toward nonracial democracy.

12 (4) The success of the transition in South Afri-
13 ca is crucial to the stability and economic develop-
14 ment of the southern African region.

15 (5) Representative leaders in South Africa, in-
16 cluding Nelson Mandela of the African National
17 Congress, have called for an end to all remaining
18 measures limiting economic contacts with South Af-
19 rica.

20 (6) In light of recent developments, the continu-
21 ation of such measures is detrimental to persons dis-
22 advantaged by apartheid.

23 **SEC. 3. UNITED STATES POLICY.**

24 It is the sense of the Congress that—

25 (1) the United States should—

2 ecutive Council in South Africa,

3 (B) encourage rapid progress toward the
4 establishment of a nonracial democratic govern-
5 ment in South Africa, and

6 (C) support a consolidation of democracy
7 in South Africa through democratic elections
8 for an interim government and a new nonracial
9 constitution;

10 (2) the United States should continue to pro-
11 vide assistance to support the transition to a
12 nonracial democracy in South Africa, and should
13 urge international financial institutions and other
14 donors to also provide such assistance;

15 (3) to the maximum extent practicable, the
16 United States should consult closely with inter-
17 national financial institutions, other donors, and
18 South African entities on a coordinated strategy to
19 support the transition to a nonracial democracy in
20 South Africa;

21 (4) in order to provide ownership and manage-
22 rial opportunities, professional advancement, train-
23 ing, and employment for disadvantaged South Afri-
24 cans and to respond to the historical inequities cre-
25 ated under apartheid, the United States should—

2 terprise and free markets in South Africa,

3 (B) encourage the South African private
4 sector to take a special responsibility and inter-
5 est in providing such opportunities, advance-
6 ment, training, and employment for dis-
7 advantaged South Africans, and

8 (C) encourage United States private sector
9 investment in and trade with South Africa;

10 (5) the United States should urge the Govern-
11 ment of South Africa to liberalize its trade and in-
12 vestment policies to facilitate the expansion of the
13 economy, and to shift resources to meet the needs of
14 disadvantaged South Africans;

15 (6) the United States should promote coopera-
16 tion between South Africa and other countries in the
17 region to foster regional stability and economic
18 growth; and

19 (7) the United States should demonstrate its
20 support for an expedited transition to, and should
21 adopt a long term policy beneficial to the establish-
22 ment and perpetuation of, a nonracial democracy in
23 South Africa.

OTHER PROVISIONS DIRECTED AT SOUTH AFRICA.

(a) COMPREHENSIVE ANTI-APARTHEID ACT.—

(1) IN GENERAL.—All provisions of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5001 and following) are repealed as of the date of enactment of this Act, except for the sections specified in paragraph (2).

(2) EFFECTIVE DATE OF REPEAL OF CODE OF CONDUCT REQUIREMENTS.—Sections 1, 3, 203(a), 203(b), 205, 207, 208, 601, 603, and 604 of the Comprehensive Anti-Apartheid Act of 1986 are repealed as of the date on which the President certifies to the Congress that an interim government that was elected on a nonracial basis through free and fair elections has taken office in South Africa.

CAA

(3) CONFORMING AMENDMENTS.—(A) Section 3 of the Comprehensive Anti-Apartheid Act of 1986 is amended by striking paragraphs (2) through (4) and paragraphs (7) through (9), by inserting “and” at the end of paragraph (5), and by striking “; and” at the end of paragraph (6) and inserting a period.

§ Section 3
is amended →
until repealed
when electing

(B) The following provisions of the Foreign Assistance Act of 1961 that were enacted by the Comprehensive Anti-Apartheid Act of 1986 are repealed:

FAA

2 U.S.C. 2151n); section 117 (22 U.S.C. 2151o), re-
3 lating to assistance for disadvantaged South Afri-
4 cans; and section 535 (22 U.S.C. 2346d). Section
5 116(e)(1) of the Foreign Assistance Act of 1961 is
6 amended by striking "(1)".

7 (b) OTHER PROVISIONS.—The following provisions
8 are repealed or amended as follows:

9 (1) Subsections (c) and (d) of section 802 of
10 the International Security and Development Co-
11 operation Act of 1985 (99 Stat. 261) is repealed.

12 (2) Section 211 of the Foreign Relations Au-
13 thorization Act, Fiscal Years 1986 and 1987 (99
14 Stat. 432) is repealed, and section 1(b) of that Act
15 is amended by striking the item in the table of con-
16 tents relating to section 211.

17 (3) Sections 1223 and 1224 of the Foreign Re-
18 lations Authorization Act, Fiscal Years 1988 and
19 1989 (101 Stat. 1415) is repealed, and section 1(b)
20 of that Act is amended by striking the items in the
21 table of contents relating to sections 1223 and 1224.

22 (4) Section 362 of the Foreign Relations Au-
23 thorization Act, Fiscal Years 1992 and 1993 (105
24 Stat. 716) is repealed, and section 2 of that Act is

2 tents relating to section 362.

3 (5) Section 2(b)(9) of the Export-Import Bank
4 Act of 1945 (12 U.S.C. 635(b)(9)) is repealed.

5 (6) Section 43 of the Bretton Woods Agree-
6 ments Act (22 U.S.C. 286aa) is amended by repeal-
7 ing subsection (b) and by striking "(a)".

8 (7) Section 330 of H.R. 5205 of the 99th Con-
9 gress (Department of Transportation and Related
10 Agencies Appropriations Act, 1987) (22 U.S.C.
11 5056a) as incorporated by reference in section
12 101(l) of Public Law 99-500 and Public-Law 99-
13 591, and made effective as if enacted into law by
14 section 106 of Public Law 100-202, is repealed.

15 (8)(A) Section 901(j)(2)(C) of the Internal Rev-
16 enue Code of 1986 (26 U.S.C. 901(j)(2)(C)) is re-
17 pealed.

18 (B) Subparagraph (A) shall not be construed as
19 affecting any of the transitional rules contained in
20 Revenue Ruling 92-62 which apply by reason of the
21 termination of the period for which section 901(j) of
22 the Internal Revenue Code of 1986 was applicable to
23 South Africa.

2 Act of 1974 (19 U.S.C. 2462(b)) is amended by
3 striking "Republic of South Africa".

4 (c) SANCTIONS MEASURES ADOPTED BY STATE OR
5 LOCAL GOVERNMENTS OR PRIVATE ENTITIES.—The Con-
6 gress urges all State or local governments and all private
7 entities in the United States that have adopted any re-
8 striction on economic interactions with South Africa, or
9 any policy discouraging such interaction, to rescind such
10 restriction or policy.

11 SEC. 5. UNITED STATES ASSISTANCE FOR THE TRANSITION
12 TO A NONRACIAL DEMOCRACY.

13 (a) IN GENERAL.—The President is authorized and
14 encouraged to provide assistance under chapter 10 of part
15 I of the Foreign Assistance Act of 1961 (relating to the
16 Development Fund for Africa) or chapter 4 of part II of
17 that Act (relating to the Economic Support Fund) to sup-
18 port the transition to nonracial democracy in South Afri-
19 ca. Such assistance shall—

20 (1) focus on building the capacity of dis-
21 advantaged South Africans to take their rightful
22 place in the political, social, and economic systems
23 of their country;

24 (2) give priority to working with and through
25 South African nongovernmental organizations whose

2 lation and which have the support of the dis-
3 advantaged communities being served by such orga-
4 nizations;

5 (3) in the case of education programs—

6 (A) be used to increase the capacity of
7 South African institutions to better serve the
8 needs of individuals disadvantaged by apart-
9 heid;

10 (B) emphasize education within South Af-
11 rica to the extent that assistance takes the form
12 of scholarships for disadvantaged South African
13 students; and

14 (C) fund nontraditional training activities;

15 (4) support activities to prepare South Africa
16 for elections, including voter and civic education pro-
17 grams, political party building, and technical elec-
18 toral assistance;

19 (5) support activities and entities, such as the
20 Peace Accord structures, which are working to end
21 the violence in South Africa; and

22 (6) support activities to promote human rights,
23 democratization, and a civil society.

24 (b) GOVERNMENT OF SOUTH AFRICA.—

2 provided in paragraph (2), assistance provided in ac-
3 cordance with this section may not be made available
4 to the Government of South Africa, or organizations
5 financed and substantially controlled by that govern-
6 ment, unless the President certifies to the Congress
7 that an interim government that was elected on a
8 nonracial basis through free and fair elections has
9 taken office in South Africa.

10 (2) EXCEPTIONS.—Notwithstanding paragraph
11 (1), assistance may be provided for—

12 (A) the Transitional Executive Council;

13 (B) South African higher education insti-
14 tutions, particularly those traditionally dis-
15 advantaged by apartheid policies; and

16 (C) any other organization, entity, or activ-
17 ity if the President determines that the assist-
18 ance would promote the transition to nonracial
19 democracy in South Africa.

20 Any determination under subparagraph (C) shall be
21 based on consultations with South African individ-
22 uals and organizations representative of the majority
23 population in South Africa (particularly con-
24 sultations through the Transitional Executive Coun-

2 sional committees.

3 **SEC. 6. UNITED STATES INVESTMENT AND TRADE.**

4 (a) **TAX TREATY.**—The President should begin im-
5 mediately to negotiate a tax treaty with South Africa to
6 facilitate United States investment in that country.

7 (b) **OPIC.**—The President should immediately initi-
8 ate negotiations with the Government of South Africa for
9 an agreement authorizing the Overseas Private Invest-
10 ment Corporation to carry out programs with respect to
11 South Africa in order to expand United States investment
12 in that country.

13 (c) **TRADE AND DEVELOPMENT AGENCY.**—In carry-
14 ing out section 661 of the Foreign Assistance Act of 1961,
15 the Director of the Trade and Development Agency should
16 provide additional funds for activities related to projects
17 in South Africa.

18 (d) **EXPORT-IMPORT BANK.**—The Export-Import
19 Bank of the United States should expand its activities in
20 connection with exports to South Africa.

21 (e) **PROMOTING DISADVANTAGED ENTERPRISES.**—

22 (1) **INVESTMENT AND TRADE PROGRAMS.**—

23 Each of the agencies referred to in subsections (b)
24 through (d) should take active steps to encourage
25 the use of its programs to promote business enter-

2 South Africans disadvantaged by apartheid.

3 (2) UNITED STATES GOVERNMENT PROCURE-
4 MENT.—Notwithstanding any law relating to the
5 making or performance of, or the expenditure of
6 funds for, United States Government contracts, the
7 Secretary of State and the head of any other depart-
8 ment or agency of the United States carrying out
9 activities in South Africa shall, to the maximum ex-
10 tent practicable, in procuring goods or services,
11 make affirmative efforts to assist business enter-
12 prises having more than 50 percent beneficial owner-
13 ship by South African blacks or other nonwhite
14 South Africans.

15 SEC. 7. INFORMATION AND EDUCATIONAL EXCHANGE PRO-
16 GRAMS.

17 The Director of the United States Information Agen-
18 cy should use the authorities of the United States Infor-
19 mation and Educational Exchange Act of 1948 to promote
20 the development of a nonracial democracy in South Africa.

21 SEC. 8. OTHER COOPERATIVE AGREEMENTS.

22 In addition to the actions specified in the preceding
23 sections of this Act, the President should seek to conclude
24 cooperative agreements with South Africa on a range of
25 issues, including cultural and scientific issues.

2 OTHER DONORS.

3 (a) IN GENERAL.—The President should encourage
4 other donors, particularly Japan and the European Com-
5 munity countries, to expand their activities in support of
6 the transition to nonracial democracy in South Africa.

7 (b) INTERNATIONAL FINANCIAL INSTITUTIONS.—
8 The Secretary of the Treasury shall instruct the United
9 States Executive Director of each relevant international
10 financial institution, including the International Bank for
11 Reconstruction and Development and the International
12 Development Association, to urge that institution to initi-
13 ate or expand its lending and other financial assistance
14 activities to South Africa in order to support the transition
15 to nonracial democracy in South Africa.

16 SEC. 10. CONSULTATION WITH SOUTH AFRICANS.

17 In carrying out this Act, the President shall consult
18 closely with South African individuals and organizations
19 representative of the majority population in South Africa
20 (particularly consultations through the Transitional Exec-
21 utive Council) and others committed to abolishing the
22 remnants of apartheid.

AMENDMENT OFFERED BY MR. MANZULLO TO

H.R. _____

(South African Democratic Transition Support Act of 1993)

At the end of the section entitled "United States Assistance for the Transition to a Nonracial Democracy", add the following:

- 1 (c) SOUTH AFRICAN COMMUNIST PARTY AND PAN AFRICANIST
- 2 CONGRESS. --- Assistance provided in accordance with this
- 3 section may not be made available to the South African
- 4 Communist Party, the Pan Africanist Congress, or any organi-
- 5 zation controlled or directed by the South African Communist
- 6 Party or the Pan Africanist Congress.

[TENTATIVE COMMITTEE DRAFT]

OCTOBER 4, 1998

103rd CONGRESS
1ST SESSION**H. R.** _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HAMILTON introduced the following bill; which was referred to the
Committee on _____**A BILL**To provide for the adjudication of certain claims against
the Government of Iraq.1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*3 **SECTION 1. SHORT TITLE.**4 This Act may be cited as the "Iraq Claims Act of
5 1993".6 **SEC. 2. ADJUDICATION OF CLAIMS.**7 (a) CERTAIN CLAIMS WITHIN THE JURISDICTION OF
8 UN COMMISSION.—The United States Commission is au-

1 thorized to receive and determine the validity and amounts
 2 of any claims referred to it by the Secretary of State with
 3 respect to which the United States has received lump-sum
 4 payments from the United Nations Commission.

5 (b) OTHER CLAIMS AGAINST IRAQ.—The United
 6 States Commission is authorized to receive and determine
 7 the validity and amounts of any claims by nationals of the
 8 United States against the Government of Iraq that are
 9 determined by the Secretary of State to be outside the ju-
 10 risdiction of the United Nations Commission.

11 (c) DECISION RULES.—In deciding claims under sub-
 12 section (a) or (b), the United States Commission shall
 13 apply, in the following order—

14 (1) in the case of claims under subsection (a),
 15 relevant decisions of the United Nations Security
 16 Council and the United Nations Commission;

17 (2) applicable substantive law, including inter-
 18 national law; and

19 (3) applicable principles of justice and equity.

20 (d) PRIORITY CLAIMS.—Before deciding any other
 21 claim against the Government of Iraq, the United States
 22 Commission shall, to the extent practical, decide all pend-
 23 ing non-commercial claims of members of the United
 24 States Armed Forces and other individuals arising out of
 25 Iraq's invasion and occupation of Kuwait.

1 (e) APPLICABILITY OF INTERNATIONAL CLAIMS SET-
 2 TLEMENT ACT.—To the extent they are not inconsistent
 3 with the provisions of this Act, the provisions of title I
 4 (other than section 2(c)) and title VII of the International
 5 Claims Settlement Act of 1949 (22 U.S.C. 1621--1627
 6 and 1645--1645o) shall apply with respect to claims under
 7 this Act.

8 SEC. 2. CLAIMS FUNDS.

9 (a) UN COMMISSION CLAIMS FUNDS.—The Sec-
 10 retary of the Treasury is authorized to establish in the
 11 Treasury of the United States one or more funds (hereinaf-
 12 ter in this Act referred to as the "UN Commissions
 13 Claims Funds") for payment of claims under section 2(a).
 14 The Secretary of the Treasury shall cover into the UN
 15 Commission Claims Funds such amounts as are allocated
 16 to such funds pursuant to subsection (f).

17 (b) IRAQ CLAIMS FUND.—The Secretary of the
 18 Treasury is authorized to establish in the Treasury of the
 19 United States a fund (hereinafter in this Act referred to
 20 as the "Iraq Claims Fund") for payment of claims under
 21 section 2(b). The Secretary of the Treasury shall cover
 22 into the Iraq Claims Fund such amounts as are allocated
 23 to such fund pursuant to subsection (e).

24 (c) INVESTMENT IN PUBLIC DEBT SECURITIES.—
 25 Amounts in the funds established pursuant to subsections

1 (a) and (b) shall be invested in public debt securities and
2 shall bear interest at rates determined by the Secretary
3 of the Treasury taking into consideration the current aver-
4 age market yield on outstanding marketable obligations of
5 the United States of comparable maturity.

6 (d) AUTHORITY TO VEST AND LIQUIDATE IRAQI AS-
7 SETS.—The President is authorized to vest and liquidate
8 as much of the assets of the Government of Iraq in the
9 United States that have been blocked pursuant to the
10 International Emergency Economic Powers Act (50
11 U.S.C. 1701 et seq.) as may be necessary to satisfy claims
12 under section 2(b), as well as claims of the United States
13 Government against Iraq which are determined by the
14 Secretary of State to be outside the jurisdiction of the
15 United Nations Commission.

16 (e) ALLOCATION OF PROCEEDS FROM IRAQI ASSET
17 LIQUIDATION.—The President shall allocate funds re-
18 sulting from the liquidation of assets pursuant to sub-
19 section (d) in the manner the President determines appro-
20 priate between the Iraq Claims Fund and such other ac-
21 counts as are appropriate for the payment of claims of
22 the United States Government.

23 (f) ALLOCATION OF FUNDS RECEIVED FROM UN
24 COMMISSION.—The Secretary of State shall allocate funds
25 received by the United States from the United Nations

1 Commission, in the manner the Secretary determines ap-
 2 propriate, between—

3 (1) the UN Commission Claims Funds; and

4 (2) funds established under the authority of the
 5 paragraphs under the heading "TRUST FUNDS"
 6 in the Act entitled "An Act making appropriations
 7 for the diplomatic and consular service for the fiscal
 8 year ending June thirtieth, eighteen hundred and
 9 ninety-seven", approved February 26, 1896 (22
 10 U.S.C. 2668a).

11 **SEC. 4. PROGRAM ADMINISTRATION SELF-SUFFICIENCY.**

12 (a) DEDUCTIONS FOR ADMINISTRATIVE EX-
 13 PENSES.—In order to reimburse Executive agencies for
 14 their expenses in administering the Iraq claims program
 15 and this Act, the Secretary of the Treasury shall deduct
 16 an amount equal to 1½ percent—

17 (1) from any amount covered into the claims
 18 funds established under section 3(a) or 3(b); and

19 (2) from any amounts the Secretary of State
 20 receives from the United Nations Commission which
 21 are not covered into a claims fund established under
 22 section 3(a) and which are not in payment of a
 23 claim of the United States Government.

24 (b) DISTRIBUTION.—The Secretary of the
 25 Treasury—

1 (1) shall determine, in consultation with the
2 Chairman of the United States Commission and the
3 Secretary of State, the proportional distribution of
4 the reimbursement set-aside provided for in sub-
5 section (a); and

6 (2) shall make an advance for credit, or reim-
7 burse, an Executive agency for its expenses in ad-
8 ministering the Iraq claims program and this Act.

9 Amounts received by an Executive agency pursuant to
10 paragraph (2) shall be credited or reimbursed to the ap-
11 propriation account then current and shall remain avail-
12 able for expenditure without fiscal year limitation.

13 SEC. 5. PAYMENTS.

14 (a) IN GENERAL.—The United States Commission
15 shall certify to the Secretary of the Treasury each award
16 made pursuant to section 2. The Secretary of the Treas-
17 ury shall make payment in the following order of priority
18 out of the appropriate funds established pursuant to sec-
19 tion 3(a) or 3(b):

20 (1) Payment in the amount of \$10,000 or the
21 principal amount of the award, whichever is less.

22 (2) Payment of a further \$90,000 of the prin-
23 cipal amount of the award on each claim that has
24 priority under section 2(d).

1 (3) Payments from time to time in ratable pro-
2 portions on account of the unpaid balance of the
3 principal amounts of all awards according to the
4 proportions which the unpaid balance of such
5 awards bear to the total amount in the appropriate
6 claims fund that is available for distribution at the
7 time such payments are made.

8 (4) After payment has been made of the prin-
9 cipal amounts of all such awards, pro rata payments
10 on account of accrued interest on such awards as
11 bear interest.

12 (5) After payment has been made in full of all
13 the awards payable out of a fund established pursu-
14 ant to section 3(a) or 3(b), any funds remaining in
15 that fund shall be transferred to the other claims
16 fund created pursuant to section 3(a) or 3(b), except
17 that any funds received by the United States from
18 the United Nations Commission shall be so trans-
19 ferred only to the extent not inconsistent with re-
20 quirements of the United Nations Commission.

21 (b) UNSATISFIED CLAIMS.—Payment of any award
22 made pursuant to this Act shall not extinguish any
23 unsatisfied claim, or be construed to have divested any
24 claimant, or the United States on his or her behalf, of

1 any rights against the Government of Iraq with respect
2 to any unsatisfied claim.

3 SEC. 2 RECORDS.

4 (a) TRANSFER TO COMMISSION.—The head of any
5 Executive agency may transfer or otherwise make avail-
6 able to the United States Commission such records and
7 documents relating to claims authorized to be adjudicated
8 by this Act as may be required by the United States Com-
9 mission in carrying out its functions under this Act.

10 (b) PUBLIC DISCLOSURE.—Section 552 of title 5 of
11 the United States Code (commonly referred to as the
12 “Freedom of Information Act”) shall not apply with re-
13 spect to records relating to the Iraq claims program ^{that} are—

14 (1) recommendations or decisions of the United
15 Nations Commission, or

16 (2) filings submitted by the United States, or
17 any foreign government, on its own behalf to the
18 United Nations Commission,

19 unless the Secretary of State determines that public dis-
20 closure of any such record would not be prejudicial to the
21 interests of the United States or United States claimants
22 and would be consistent with the procedures of the United
23 Nations Commission.

1 SEC. 7. STATUTE OF LIMITATIONS; DISPOSITION OF UN-
 2 PAID CERTIFIED CLAIMS.

3 (a) STATUTE OF LIMITATIONS.—Any demand or
 4 claim for payment on account of an award that is certified
 5 under the Iraq claims program shall be barred one year
 6 after the publication date of the notice required by sub-
 7 section (b).

8 (b) PUBLICATION OF NOTICE.—Nine years after the
 9 latter of—

10 (1) the last date on which the Secretary of the
 11 Treasury covers into the Iraq Claims Fund amounts
 12 allocated to that fund pursuant to section 3(e); or

13 (2) the last date on which the Secretary of the
 14 Treasury covers into any of the UN Commission
 15 Claims Funds, or into any fund described in section
 16 3(f)(2), amounts allocated to that fund pursuant to
 17 section 3(f),

18 the Secretary shall publish a notice in the Federal Reg-
 19 ister detailing the statute of limitations provided for in
 20 subsection (a) and identifying the claim numbers and
 21 awardee names of unpaid certified claims.

22 (c) DISPOSITION OF UNPAID CERTIFIED CLAIMS.—
 23 Two years after the publication date of the notice required
 24 by subsection (b), any unpaid certified claim amount
 25 under the Iraq claims program, and any remaining bal-
 26 ance in any of the UN Commission Claims Funds, in the

1 Iraq Claims Fund, or in any fund referred to in section
 2 3(f)(2) to the extent such balance reflects amounts depos-
 3 ited pursuant to that section, shall be deposited to the mis-
 4 cellaneous receipts of the Treasury.

5 SEC. 8. DEFINITIONS.

6 As used in this Act—

7 (1) the term "Government of Iraq" includes
 8 agencies ^{ministry} and instrumentalities ^{controlled entities} of that government;

9 (2) the term "Executive agency" has the mean-
 10 ing given that term by section 105 of title 5, United
 11 States Code;

12 (3) the term "Iraq claims program" means the
 13 claims whose adjudication is provided for in this Act
 14 and any other claims that are within the jurisdiction
 15 of the United Nations Commission;

16 (4) the term "United Nations Commission"
 17 means the United Nations Compensation Commis-
 18 sion established pursuant to United Nations Secu-
 19 rity Council Resolution 687 (1991); and

20 (5) the term "United States Commission"
 21 means the Foreign Claims Settlement Commission
 22 of the United States.

103D CONGRESS
1ST SESSION

H. CON. RES. 138

Expressing the sense of the Congress with respect to Saudi Arabia and the General Agreement on Tariffs and Trade (GATT).

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. GEJDENSON submitted the following concurrent resolution; which was referred jointly to the Committees on Foreign Affairs and Ways and Means

CONCURRENT RESOLUTION

Expressing the sense of the Congress with respect to Saudi Arabia and the General Agreement on Tariffs and Trade (GATT).

Whereas the Arab League has maintained a secondary and tertiary boycott since the early 1950's against United States and other countries that have commercial ties with Israel;

Whereas the United States has a long-standing policy opposing the Arab League boycott, and United States law prohibits United States firms from complying with the boycott and prohibits the provision of information to Arab countries to demonstrate compliance with the boycott;

Whereas President Clinton and Secretary of State Christopher have engaged in a major antiboycott initiative de-

signed to end the enforcement of the secondary and tertiary aspects of the Arab League boycott;

Whereas this initiative is long overdue given that the Arab League boycott has cost Israel an estimated \$44,000,000,000 over the past 40 years in lost investments and commercial opportunities;

Whereas Saudi Arabia is a member of the Arab League, and has enforced the secondary and tertiary Arab League boycott;

Whereas Saudi Arabia requested boycott-related information from United States companies nearly 1,300 times in fiscal year 1991, a level of boycott requests higher than most Arab League countries;

Whereas members of the United States Armed Forces gave their lives to protect the sovereignty of Saudi Arabia and other Middle Eastern countries in Operations Desert Shield and Desert Storm;

Whereas Saudi Arabia has officially applied to join the General Agreement on Tariffs and Trade (GATT), which binds its members to conduct trade with each other on the basis of nondiscrimination;

Whereas Israel has been a member of the General Agreement on Tariffs and Trade since 1962, and Saudi Arabia has given no indication that, if admitted to the General Agreement on Tariffs and Trade, it would cease its boycott of Israel;

Whereas Saudi Arabia has not formally and publicly abandoned its participation in the secondary and tertiary Arab League boycott; and

Whereas it is the responsibility of the United States to only support applications to join the General Agreement on

Tariffs and Trade from countries which do not undermine the objectives of the General Agreement on Tariffs and Trade by engaging in practices which distort international trade: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring),*

3 **SECTION 1. SENSE OF CONGRESS.**

4 It is the sense of the Congress that—

5 (1) President Clinton and Secretary of State
6 Christopher should be commended for engaging in a
7 major diplomatic initiative designed to encourage
8 members of the Arab League to end enforcement of
9 the secondary and tertiary aspects of the Arab
10 League boycott;

11 (2) the President and the Secretary of State
12 should give particular attention to diplomatic efforts
13 to encourage those countries that were direct bene-
14 ficiaries of Operations Desert Shield and Desert
15 Storm to end enforcement of the boycott; and

16 (3) the United States should oppose the appli-
17 cation of Saudi Arabia to join the General Agree-
18 ment on Tariffs and Trade (GATT), and should ex-
19 ercise its veto in the GATT working group to that
20 end, until such time as Saudi Arabia formally and
21 publicly renounces its participation in the secondary
22 and tertiary Arab boycott, and publicly issues the

1 necessary laws, rules, and regulations ensuring that
2 companies from the United States and other coun-
3 tries have free and open access to the Saudi Arabia
4 market regardless of their business relationship with
5 Israel.

6 **SEC. 2. TRANSMITTAL OF RESOLUTION.**

7 The Clerk of the House of Representatives shall
8 transmit a copy of this resolution to the President and
9 to the Secretary of State.

103D CONGRESS
1ST SESSION

H. CON. RES. 175

Concerning the Arab League boycott of Israel.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 1993

Mr. DEUTSCH (for himself, Mr. BERMAN, Mr. SWETT, Mr. LANTOS, Mr. SAXTON, Mr. ROEMER, Mr. SCHUMER, Mr. HASTINGS, Ms. CANTWELL, Mr. WYNN, Mr. GEJDENSON, Mr. ENGEL, Mr. LEVY, Ms. SNOWE, Mr. DIAZ-BALART, Mr. FINGERHUT, Ms. ROS-LEHTINEN, Ms. MARGOLIES-MEZVINSKY, Mr. TORKILDSEN, Ms. WOOLSEY, Mr. ANDREWS of New Jersey, Mr. ACKERMAN, Mr. JOHNSTON of Florida, and Mr. GILMAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Affairs

CONCURRENT RESOLUTION

Concerning the Arab League boycott of Israel.

Whereas the signing on September 13, 1993, of the Declaration of Principles between the Palestine Liberation Organization and the Government of Israel signals a new era of cooperation in the Middle East;

Whereas a true peace in the Middle East can only be established and remain in effect if there is economic stability and cooperation in the region;

Whereas adherence to the Arab League boycott of Israel is a source of economic instability in the Middle East;

Whereas the nations of the Arab League instituted a primary boycott against Israel in 1948;

Whereas in the early 1950's the Arab nations instituted a secondary and tertiary boycott against the United States and other firms because of their commercial ties to Israel;

Whereas the boycott attempts to use economic blackmail to force United States firms to comply with boycott regulation;

Whereas the boycott was cited by the United States Trade Representative in the 1992 National Trade Estimate Report on Foreign Trade Barriers as an "additional legal restraint to U.S. trade in the region";

Whereas hundreds of United States firms have been blacklisted and barred from doing business with nations of the Arab League under the secondary and tertiary boycott;

Whereas the total damage caused by the boycott is unknown because the number of United States firms that conduct business with Israel and have not attempted commercial transactions with nations of the Arab League due to boycott requirements is uncertain; and

Whereas the United States has a policy of prohibiting United States firms from providing Arab nations with the requested evidence of compliance to boycott regulation:
Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring),*

1 **SECTION 1. SHORT TITLE.**

2 This resolution may be cited as the "Anti-Boycott
3 Resolution of 1993".

4 **SEC. 2. EXPRESSION OF CONGRESSIONAL VIEWS.**

5 The Congress—

6 (1) believes the continuation of the Arab
7 League boycott of Israel will be a severe impediment
8 to the economic prosperity of all participating na-
9 tions and to the establishment of a lasting peace in
10 the Middle East;

11 (2) believes the secondary and tertiary boycott
12 cause substantial economic losses to United States
13 firms;

14 (3) welcomes the actions by those nations of the
15 Arab League that have begun dismantling the sec-
16 ondary and tertiary boycott, and urges them to con-
17 tinue their efforts until a complete dissolution of the
18 primary, secondary, and tertiary boycott is achieved;

19 (4) hopes that the indefinite postponement of
20 the October 24, 1993, meeting of the Central Boy-
21 cott Committee signals an end to the placement of
22 more United States firms on the boycott list and a
23 willingness to dismantle the boycott in its entirety;

24 (5) urges those nations that have begun to or
25 are considering dismantling all forms of the boycott
26 to publicly make such statements;

1 (6) urges those nations that are still enforcing
2 the boycott to dismantle the boycott in all its forms
3 and to issue the necessary laws, rules, and regula-
4 tions to ensure that United States firms have free
5 and open access to Arab markets regardless of their
6 business relationship with Israel;

7 (7) urges those nations, in addition, to cease
8 enforcing and requiring participation in the boycott
9 in its primary, secondary, and tertiary forms;

10 (8) urges the United States Government to con-
11 tinue to raise the boycott as an unfair trade practice
12 in every appropriate international trade forum; and

13 (9) expresses the sense of the Congress that the
14 end of the Arab League boycott of Israel is of great
15 urgency to the United States Government and will
16 continue to be a priority issue in all bilateral rela-
17 tions with participating nations until its complete
18 dissolution.

OPENING STATEMENT BY CONGRESSMAN TOBY ROTH
DURING MARKUP OF THE
ENVIRONMENTAL EXPORT PROMOTION ACT

February 8, 1994

MR. CHAIRMAN, THE HALLMARK OF THIS SUBCOMMITTEE IS THAT WE WORK TOGETHER TO CREATE JOBS FOR AMERICAN WORKERS, BY INCREASING EXPORTS.

IN THE LAST CONGRESS, WE PASSED TWO BILLS WHICH ADDED ONE HUNDRED THOUSAND NEW JOBS:

--THE JOBS THROUGH EXPORTS ACT

--AND THE EXPORT ENHANCEMENT ACT.

WE PASSED THOSE BILLS BECAUSE OF CLOSE BI-PARTISAN COOPERATION. IN THIS CONGRESS WE ARE WORKING TOGETHER AGAIN TO CREATE JOBS, AND I TRUST THAT WE CAN SURPASS OUR MARK FROM THE LAST CONGRESS.

IN THE FIRST SESSION, WE HELD OUR HEARINGS.

NOW WE ARE READY TO DRAFT LEGISLATION.

THIS BILL IS THE FIRST OF SEVERAL MEASURES THAT WE WILL BRING TO THE HOUSE IN COMING MONTHS.

AMERICA IS A WORLD LEADER IN ENVIRONMENTAL TECHNOLOGY.

AMERICAN COMPANIES HOLD NEARLY HALF OF THE WORLD'S \$300 BILLION MARKET FOR THIS TECHNOLOGY.

WE KNOW THAT IN 6 YEARS, THE MARKET WILL DOUBLE, TO \$600 BILLION A YEAR.

BUT OTHER NATIONS HAVE DISCOVERED THIS MARKET.

GERMANY, JAPAN, FRANCE, THE U.K. AND THE NORDIC COUNTRIES ALL ARE

MOVING TO INCREASE THEIR EXPORTS OF THIS TECHNOLOGY.

IF OUR COMPANIES ARE TO STAY ON TOP IN THIS FIELD, WE HAVE TO STRENGTHEN OUR EXPORT PROMOTION EFFORTS.

THIS LEGISLATION IS A GOOD STEP IN THAT DIRECTION, AND IT HAS WON THE ENDORSEMENT OF A NATION-WIDE COALITION OF COMPANIES, ORGANIZATIONS AND RESEARCHERS.

SO, I COMMEND YOU FOR BRINGING THIS BILL TO THE SUBCOMMITTEE, AND I WILL WORK WITH YOU TO ENACT IT INTO LAW.

103D CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. GEJDENSON (for himself, Mr. STUDDS, and Ms. FURSE) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Export Enhancement Act of 1988 to promote further United States exports of environmental technologies, goods, and services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Environmental Export
5 Promotion Act of 1994".

1 SEC. 2. PROMOTION OF UNITED STATES ENVIRONMENTAL
2 EXPORTS.

3 (a) ENVIRONMENTAL TECHNOLOGIES TRADE ADVI-
4 SORY COMMITTEE.—Section 2313 of the Export Enhance-
5 ment Act of 1988 (15 U.S.C. 4728) is amended—

6 (1) by striking subsection (d); —

7 (2) by redesignating subsection (c) as sub-
8 section (e); and

9 (3) by inserting after subsection (b) the fol-
10 lowing:

11 “(c) ENVIRONMENTAL TECHNOLOGIES TRADE ADVI-
12 SORY COMMITTEE.—

13 “(1) ESTABLISHMENT AND PURPOSE.—The
14 President shall establish the Environmental Tech-
15 nologies Trade Advisory Committee (hereafter in
16 this section referred to as the ‘Committee’). The
17 purpose of the Committee shall be to provide advice
18 and guidance to the Working Group in the develop-
19 ment and administration of programs to expand
20 United States exports of environmental technologies,
21 goods, and services.

22 “(2) MEMBERSHIP.—The members of the Com-
23 mittee shall be drawn from representatives of—

24 “(A) environmental businesses, including
25 small businesses:

“(B) trade associations in the environmental sector;

“(C) private sector organizations involved in the promotion of environmental exports; and

“(D) other appropriate interested members of the public.

“(d) EXPORT PLANS FOR PRIORITY COUNTRIES.—

“(1) PRIORITY COUNTRY IDENTIFICATION.—

The Working Group, in consultation with the Committee, shall annually assess which foreign countries have markets with the greatest potential for the export of United States environmental technologies, goods, and services. Of these countries the Working Group shall select as priority countries 5 with the greatest potential for the application of United States Government export promotion resources related to environmental exports.

“(2) EXPORT PLANS.—The Working Group, in consultation with the Committee, shall annually create a plan for each priority country selected under paragraph (1), setting forth in detail ways to increase United States environmental exports to such country. Each such plan shall—

“(A) identify the primary public and private sector opportunities for United States ex-

1 porters of environmental technologies, goods,
2 and services in the priority country;

3 "(B) analyze the financing and other re-
4 quirements for major projects in the priority
5 country which will use environmental tech-
6 nologies, goods, and services, and analyze
7 whether such projects are dependent upon fi-
8 nancial assistance from foreign countries or
9 multilateral institutions; and

10 "(C) list specific actions to be taken by the
11 member agencies of the Working Group to in-
12 crease United States exports to the priority
13 country."

14 (b) ADDITIONAL MECHANISMS TO PROMOTE ENVI-
15 RONMENTAL EXPORTS.—Section 2313 of the Export En-
16 hancement Act of 1988 is further amended by adding at
17 the end the following:

18 "(f) ENVIRONMENTAL TECHNOLOGIES SPECIALISTS
19 IN THE UNITED STATES AND FOREIGN COMMERCIAL
20 SERVICE.—

21 "(1) ASSIGNMENT OF ENVIRONMENTAL TECH-
22 NOLOGIES SPECIALISTS.—The Secretary of Com-
23 merce shall assign a specialist in environmental tech-
24 nologies to the office of the United States and For-
25 eign Commercial Service in each of the 5 priority

countries selected under subsection (d)(1), and the Secretary is authorized to assign such a specialist to the office of the United States and Foreign Commercial Service in any country that is a promising market for United States exports of environmental technologies, goods, and services. Such specialist may be an employee of the Department, an employee of any relevant United States Government department or agency assigned on a temporary or limited term basis to the Commerce Department, or a representative of the private sector assigned to the Department of Commerce.

“(2) DUTIES OF ENVIRONMENTAL TECHNOLOGIES SPECIALISTS.—Each specialist assigned under paragraph (1) shall provide export promotion assistance to United States environmental businesses, including, but not limited to—

“(A) identifying factors in the country to which the specialist is assigned that affect the United States share of the domestic market for environmental technologies, goods, and services, including market barriers, standards-setting activities, and financing issues;

“(B) providing assessments of assistance by foreign governments that is provided to pro-

1 ducers of environmental technologies, goods,
2 and services in such countries in order to en-
3 hance exports to the country to which the spe-
4 cialist is assigned, the effectiveness of such as-
5 sistance on the competitiveness of United
6 States products, and whether comparable Unit-
7 ed States assistance exists;

8 “(C) training Foreign Commercial Service
9 Officers in the country to which the specialist
10 is assigned, other countries in the region, and
11 United States and Foreign Commercial Service
12 offices in the United States, in environmental
13 technologies and the international environ-
14 mental market:

15 “(D) providing assistance in identifying
16 potential customers and market opportunities in
17 the country to which the specialist is assigned:

18 “(E) providing assistance in obtaining nec-
19 essary business services in the country to which
20 the specialist is assigned:

21 “(F) providing information on environ-
22 mental standards and regulations in the coun-
23 try to which the specialist is assigned: and

24 “(G) providing information on all United
25 States Government programs that could assist

the promotion, financing, and sale of United States environmental technologies, goods, and services in the country to which the specialist is assigned.

“(g) ENVIRONMENTAL TRAINING IN ONE-STOP SHOPS.—In addition to the training provided under subsection (f)(2)(C), the Secretary of Commerce shall establish a mechanism to train—

“(1) Commercial Service Officers assigned to the one-stop shops provided for in section 2301(b)(8), and

“(2) Commercial Service Officers assigned to district offices in districts having large numbers of environmental businesses.

in environmental technologies and in the international environmental marketplace, and ensure that such officers receive appropriate training under such mechanism. Such training may be provided by officers or employees of the Department of Commerce, and other United States Government departments and agencies, with appropriate expertise in environmental technologies and the international environmental workplace, and by appropriate representatives of the private sector.

“(h) INTERNATIONAL REGIONAL ENVIRONMENTAL INITIATIVES.—

1 “(1) ESTABLISHMENT OF INITIATIVES.—The
 2 TPCC shall establish international regional environ-
 3 mental initiatives the purpose of which shall be to
 4 coordinate the activities of Federal departments and
 5 agencies with the activities of State and local gov-
 6 ernmental institutions and the private sector to build
 7 environmental partnerships between the United
 8 States and the geographic region outside the United
 9 States for which such initiative is established. Such
 10 partnerships shall enhance environmental protection
 11 and promote sustainable development by using tech-
 12 nical expertise and financial resources of the United
 13 States in the region and by expanding United States
 14 exports of environmental technologies, goods, and
 15 services to that region.

16 “(2) ACTIVITIES.—In carrying out each inter-
 17 national regional environmental initiative, the TPCC
 18 shall—

19 “(A) support the development of sound en-
 20 vironmental policies and practices in countries
 21 in the geographic region for which the initiative
 22 is established, including the development of en-
 23 vironmentally sound regulatory regimes and en-
 24 forcement mechanisms, through the provision of
 25 foreign assistance;

“(B) identify and disseminate to United States environmental businesses information regarding specific environmental business opportunities in that geographic region;

“(C) coordinate existing Federal efforts to promote environmental exports to that geographic region, and ensure that such efforts are fully coordinated with environmental export promotion efforts undertaken by the States and the private sector;

“(D) increase assistance provided by the Federal Government to promote exports from the United States of environmental technologies, goods, and services to that geographic region, such as trade missions, reverse trade missions, trade fairs, and programs in the United States to train foreign nationals in United States environmental technologies; and

“(E) increase high-level advocacy by United States Government officials for United States environmental businesses seeking market opportunities in that geographic region.

“(i) ENVIRONMENTAL TECHNOLOGIES PROJECT ADVOCACY CALENDAR.—The Working Group shall maintain a calendar, updated at the end of each calendar quarter,

1 of significant opportunities for United States environ-
2 mental businesses in foreign markets and trade promotion
3 events, which shall be made available to the public. Such
4 calendar shall—

5 “(1) identify the 50 to 100 environmental infra-
6 structure and procurement projects in foreign mar-
7 kets that have the greatest potential in the calendar
8 quarter for United States exports of environmental
9 technologies, goods, and services; and

10 “(2) include trade promotion events, such as
11 trade missions and trade fairs, in the environmental
12 sector.

13 “(j) DEFINITION.—For purposes of this section, the
14 term ‘environmental business’ means a business that pro-
15 duces environmental technologies, goods, or services.”.

STATEMENT OF SAM GEJDENSON

CHAIRMAN

SUBCOMMITTEE ON ECONOMIC POLICY, TRADE AND ENVIRONMENT

The Subcommittee meets today to consider a draft of the Export Administration Act of 1994. This bill would fundamentally reform the export control system to make it more efficient and better adapted to control the proliferation of weapons of mass destruction.

Let me say at the outset, that this effort has been and will continue to be bipartisan in nature. I have worked with the Ranking Minority Member, Toby Roth, not only in a cooperative way, but as true partners. The bill that members have before them today reflects that partnership.

I also have every expectation that this Subcommittee will work closely with the Administration to produce responsible and meaningful reform. Clearly there are differences between the Administration's bill and our mark up vehicle. However, the Administration is in agreement that legislation is vital, and to its credit has produced a bill. Moreover, there is basic consensus on the issues that must be addressed, if not on precisely how to address them.

The bill in front of you represents the work of a number of people. It incorporates many of the concepts set out in

legislation introduced by Mr. Roth and Mr. Oberstar. It also incorporates the thinking of legislation introduced by Ms. Cantwell, Mr. Manzullo, Mr. Engle, Mr. Edwards, and Mr. Wyden. The provision on commodity jurisdiction has been in 2 conference reports and is derived from legislation thoughtfully developed and effectively advocated by Mr. Johnston. The sanctions section and the separate titles on nuclear non-proliferation draw heavily from legislation introduced by my colleague Tom Lantos. Those provisions strengthen this bill and I appreciate his excellent work in that area. Our bill also adopts many of the ideas in the Administration's bill. It is obvious that much thought and hard work went into the Administration's proposal.

The Subcommittee's mark up vehicle would accomplish a number of important objectives. It would increase the effectiveness of export controls by emphasizing multilateral cooperation, imposing discipline on the use of unilateral controls, and providing incentives for participation by others in multilateral regimes. The nonproliferation export control regimes are not perfect. But they serve a very significant function and must be given the opportunity to mature. This bill protects the sanctity of those regimes.

At the same time, unless controls are multilateral, they typically do not achieve nonproliferation objectives, but do disadvantage U.S. exporters. The procedural discipline imposed by the bill on unilateral controls is virtually identical to that

imposed on controls on agricultural exports. We should not single out high tech exports as the items of choice for unilateral controls.

The bill also harmonizes and toughens the sanctions imposed for violation of export controls on components of nuclear, chemical and biological weapons, and the missiles that deliver them. It achieves a measure of consistency in the sanctions to be imposed, the conditions under which they will be imposed, and the process to be employed in imposing them. Individuals here and abroad must know that the U.S. will not tolerate the export of the components of weapons of mass destruction to those who would proliferate.

The bill would reform the export licensing process by establishing deadlines for license review and additional streamlining. All export licenses would have to be reviewed and a response provided within 30 days. We cannot allow endless discussions among mid-level bureaucrats to impede the ability of American companies to export.

We must deny dual use items to terrorist countries. They are not among the family of nations and cannot be treated as if they are. We must also increase the transparency of the export control system. Exporters have a right to know where they can sell, where they cannot, and under what circumstances. It is not a lot to ask.

This bill is the product of 5 hearings held between June and

November of last year, and countless additional hearings, briefings and investigations held in previous years. We have talked formally and informally with numerous individuals and groups. Quite obviously this is not an easy issue to take on, and just as obviously, there are no magical answers. But, given the changes in the national security threat posed to the United States, and the significance of exports to our economic well being and therefore to our national security, the current system demands reform.

OPENING STATEMENT OF REP. ELIOT L. ENGEL

Mr. ENGEL: Mr. Chairman, I would like to take this opportunity to express my support for the legislation you have developed, with the cooperation of our colleague Rep. Roth, to revamp the Export Administration Act. You and your staff have worked long and hard hours to develop this important bill. I express my appreciation for your efforts and my strong support for the bill you have produced.

As you are well aware, rules governing American exports are out-of-date. They apply to an era long since past. The Cold War required tough rules to restrict the technologies U.S. companies could export. The Cold War, however, is over and those rules must be rewritten. Your bill represents a successful attempt to bring America's export controls into the present and provides an effective framework for the future.

Among the provisions contained in this important legislation, are the timely review of export license applications, harmonized and stricter sanctions for violations of export laws, and more transparency in the licensing process in general. Most importantly, however, this bill places a strong emphasis on multilateral controls over unilateral controls. Only if all exporting countries restrict the supply of an item or technology, will controls be effective.

Nevertheless, we still live in a dangerous world and

restrictions on exports remain needed critical in certain circumstances. While bringing the Export Administration Act into the present, the bill offered today by Chairman Gejdenson retains strict controls on technologies which could pose a threat to America's national security.

Mr. Chairman, I am glad to have participated in the effort to produce this bill. Once again, I express my appreciation for your efforts and those of the Ranking Member of the Committee and offer my full support for this legislation.

AMENDMENT TO H.R.
OFFERED BY MR. MANZULLO

In section 104(a)—

(1) insert “and subject to paragraph (2)(B),”
after “this title,”; and

(2) in paragraph (2)—

(A) insert “(A)” before “Validated”; and

(B) add at the end the following:

1 (B)(i) A distribution license, authorizing mul-
2 multiple exports of general application computers to any
3 country other than a sanctioned country. The Sec-
4 retary shall grant such distribution licenses strictly
5 on the basis of the reliability of the applicant and
6 foreign consignees with respect to the prevention of
7 diversion of commodities or technology, consistent
8 with section 105(a)(1). Not later than 30 days after
9 an application is submitted under section 109 for
10 such a distribution license to export general applica-
11 tion computers, the Secretary shall grant the license
12 with respect to such distributors and end users that
13 the Secretary determines to be reliable. The Sec-
14 retary may deny the license application with respect
15 to those distributors and end users that present a
16 risk of diversion of commodities or technology, di-

1 rectly or indirectly, consistent with the provisions of
2 section 105(a)(1).

3 (ii) For purposes of this subparagraph, a "sanc-
4 tioned country" is any country—

5 (I) the government of which the Secretary
6 of State has determined to be a government
7 that has repeatedly provided support for acts of
8 international terrorism; or

9 (II) against which the United States main-
10 tains an embargo on all, or substantially all, ex-
11 ports pursuant to the International Emergency
12 Economic Powers Act or the Trading With The
13 Enemy Act.

14 (iii) For purposes of this subparagraph, the
15 term "general application computers" means any
16 computer system, computer networking equipment,
17 peripheral to a computer system, or combination
18 thereof, on which export controls are in effect ^{under} sec-
19 tion 105, except the following:

20 (I) Supercomputers.

21 (II) Computers specially designed for use
22 in connection with the capability described in
23 subparagraph (A) or (B) of subsection (a)(1).

(III) Computers specially designed for use in connection with the surreptitious interception of wire or oral communications.

Add at the end of section 105 the following:

(n) STUDY ON COMPUTER EXPORT CONTROLS.—

(1) ARRANGEMENTS FOR AND CONTENT OF STUDY.—

(A) ARRANGEMENTS FOR CONDUCTING STUDY.—The Secretary of Commerce, not later than 60 days after the date of the enactment of this Act, shall enter into appropriate arrangements with the National Academy of Sciences and the National Academy of Engineering (hereafter in this subsection referred to as the “Academies”) to conduct a comprehensive study on the extent to which exports of computers can be effectively controlled, and the policy reasons for maintaining such controls.

(B) REQUIREMENT OF STUDY.—Recognizing the need to enhance the competitiveness of the United States computer industry while preventing sensitive technology from being used to develop weapons of mass destruction by controlled countries, the study shall—

1 (i) examine the trends of the com-
 2 puter industry, including those toward new
 3 and more powerful computer systems
 4 based upon "Parallel Computing" and
 5 "Virtual Parallel Processing", and their ef-
 6 fect on the extent to which exports of com-
 7 puter systems can be effectively controlled,
 8 with respect to the factors described in
 9 clause (ii);

10 (ii) examine the factors that make it
 11 increasingly difficult to control the export
 12 of computers, including the size and
 13 expandability of many modern computer
 14 systems and the availability of such com-
 15 puter systems from foreign sources; and

16 (iii) the effect of export controls on
 17 the competitiveness of the United States
 18 computer industry.

19 (2) ADVISORY PANEL.—In conducting the study
 20 under paragraph (1), the Academies shall appoint an
 21 Advisory Panel of not more than 12 members who
 22 shall be selected from among individuals who, by vir-
 23 tue of their experience and expertise, are knowledge-
 24 able in relevant scientific, business, legal, or admin-
 25 istrative matters. No individual may serve as a mem-

1 ber who is an elected or appointed official or em-
2 ployee in the executive, legislative, or judicial branch
3 of any government. In selecting members of the Ad-
4 visory Panel, the Academies shall seek suggestions
5 from the President, the Congress, and representa-
6 tives of industry and the academic community.

7 (3) EXECUTIVE BRANCH COOPERATION.—The
8 Secretary of Commerce, the Secretary of Defense,
9 the Secretary of State, the Director of the Central
10 Intelligence Agency, and the head of any department
11 or agency that exercises authority under this title—

12 (A) shall furnish to the Academies, upon
13 request and under appropriate safeguards, clas-
14 sified or unclassified information which the
15 Academies determine to be necessary for the
16 purposes of conducting the study required by
17 this subsection; and

18 (B) shall work with the Academies on such
19 problems related to the study as the Academies
20 consider necessary.

21 (4) REPORT.—Under the direction of the Advi-
22 sory Panel, the Academies shall prepare and submit
23 to the President and the Congress, not later than 9
24 months after entering into the arrangements re-
25 ferred to in paragraph (1), a report which contains

1 a detailed statement of findings and conclusions of
2 the Academies from the study conducted under
3 paragraph (1), together with their recommendations
4 for the complete removal of controls from computers
5 or specifying the level of technology to which con-
6 trols on computers should be reduced.

AMENDMENT TO H.R.
OFFERED BY MR. GEJDENSON

Add the following at the end of section 102:

- 1 (12) Minimization of restrictions on exports of
2 agricultural commodities and products is of critical
3 importance to the maintenance of a sound agricul-
4 tural sector, to a positive contribution to the balance
5 of payments, to reducing the level of Federal ex-
6 penditures for agricultural support programs, and to
7 United States cooperation in efforts to eliminate
8 malnutrition and world hunger.

Add the following at the end of section 103:

- 9 (12) To minimize restrictions on the export of
10 agricultural commodities and products.

[SUBCOMMITTEE DRAFT]

MARCH 9, 1994

103D CONGRESS
2D SESSION**H. R.** _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the Committee
on _____**A BILL**

To provide authority to control exports.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Export Administration
5 Act of 1994".

6 SEC. 2. TABLE OF CONTENTS.

7 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—EXPORT ADMINISTRATION

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. Policy statement.
- Sec. 104. General provisions.
- Sec. 105. Multilateral controls.
- Sec. 106. Emergency controls.
- Sec. 107. Short supply controls.
- Sec. 108. Foreign boycotts.
- Sec. 109. Procedures for processing export license applications; other inquiries.
- Sec. 110. Violations.
- Sec. 111. Sanctions for proliferation activity and the use of weapons of mass destruction.
- Sec. 112. Administrative and judicial review.
- Sec. 113. Enforcement.
- Sec. 114. Export control authorities and procedures.
- Sec. 115. Annual report.
- Sec. 116. Definitions.
- Sec. 117. Effects on other Acts.
- Sec. 118. Authorization of appropriations.
- Sec. 119. Conforming amendments to other laws.
- Sec. 120. Effective date.
- Sec. 121. Expiration date.
- Sec. 122. Savings provision.

TITLE II—SANCTIONS FOR WEAPONS PROLIFERATION

- Sec. 201. Sanctions against countries.
- Sec. 202. Arms sales and foreign assistance.
- Sec. 203. Role of international financial institutions.
- Sec. 204. Amendments to the Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 205. Export-Import Bank.
- Sec. 206. Reports.
- Sec. 207. Technical correction.
- Sec. 208. Definitions.
- Sec. 209. Effective date.

TITLE III—INTERNATIONAL ATOMIC ENERGY AGENCY

- Sec. 301. Bilateral and multilateral initiatives.
- Sec. 302. IAEA internal reforms.
- Sec. 303. Reporting requirement.
- Sec. 304. Definitions.

TITLE I—EXPORT ADMINISTRATION

SEC. 101. SHORT TITLE.

This title may be cited as the “Export Act of 1994”.

SEC. 102. FINDINGS.

The Congress makes the following findings:

1 (1) Export controls shall be a part of a com-
2 prehensive response to national security threats.
3 United States exports should be restricted only for
4 critical national security, nonproliferation, and for-
5 eign policy reasons.

6 (2) Exports of certain commodities and tech-
7 nology may adversely affect the national security of
8 the United States by making a direct, substantial,
9 and material contribution to the military potential of
10 individual countries or by disseminating the capabil-
11 ity to produce or use weapons of mass destruction.
12 Therefore, the administration of export controls
13 should emphasize the control of these exports.

14 (3) The acquisition of dual use commodities
15 and technology by those countries and end users
16 whose actions or policies run counter to United
17 States national security interests may enhance the
18 military capabilities of those countries, particularly
19 their ability to produce and deliver nuclear, chemi-
20 cal, and biological weapons. This enhancement
21 threatens the security of the United States, its allies,
22 and other friendly nations, and places additional de-
23 mands on the defense budget of the United States.
24 Availability to certain countries and end users of
25 items that contribute to certain military capabilities

1 or the proliferation of weapons of mass destruction
2 is a fundamental concern of the United States and
3 should be eliminated through negotiations and other
4 appropriate means whenever possible.

5 (4) Exporting is critical to the economic health
6 of the United States and, therefore, to its national
7 security as well. With the growing importance of ex-
8 ports to sustained United States economic growth
9 and vitality, restrictions on exports must be evalu-
10 ated in terms of their effects on the United States
11 economy. Restrictions on exports from the United
12 States have had serious adverse effects on economic
13 competitiveness and domestic employment, particu-
14 larly when restraints applied by the United States
15 are more extensive than those imposed by other
16 countries or when United States export control pol-
17 icy is uncertain.

18 (5) Export controls cannot be the sole instru-
19 ment of the United States to prevent a country or
20 end user from developing weapons of mass destruc-
21 tion. For this reason, export controls should be ap-
22 plied as part of a comprehensive response to security
23 threats.

24 (6) The national security of the United States
25 depends not only on wise foreign policies and a

1 strong defense, but also a vibrant national economy.
2 To be truly effective, export controls should be ap-
3 plied uniformly by all suppliers.

4 (7) Effective export controls also must be fo-
5 cused only on those items that materially contribute
6 to a country's or an end user's military potential or
7 potential to produce or use weapons of mass destruc-
8 tion.

9 (8) Unilateral export controls are generally not
10 effective in influencing the behavior of other govern-
11 ments or impeding access to controlled countries of
12 controlled items. In most situations, unilateral con-
13 trols alone impede access to United States sources
14 of supply without affecting the ability of controlled
15 countries to obtain controlled items elsewhere. More-
16 over, unilateral controls permit foreign competitors
17 to serve markets the United States Government de-
18 nies to United States firms and workers, thus im-
19 pairing the reliability of United States suppliers in
20 comparison with their foreign competitors.

21 (9) The United States recognizes the impor-
22 tance of comprehensive enforcement measures to
23 maximize the effectiveness of multilateral controls.

24 (10) The United States' export control system
25 must not be overly restrictive or bureaucratic, or un-

dermine the competitive position of American industry. The export control system must be efficient, responsive, transparent, and effective.

(11) Export restrictions that negatively affect the United States industrial base ultimately weaken United States military capabilities and lead to dependencies on foreign sources for key components.

SEC. 103. POLICY STATEMENT.

It is the policy of the United States to do the following:

(1) To stem the proliferation of weapons of mass destruction and the means to deliver them by—

(A) leading international efforts to control the proliferation of chemical, biological, and nuclear weapons and missiles;

(B) controlling involvement of United States persons in, and contributions by United States persons to, foreign programs intended to develop weapons of mass destruction or missiles and the means to design, develop, produce, stockpile, or use them; and

(C) implementing international treaties or other agreements that require controls on exports of designated items, reports on the pro-

1 duction, processing, consumption, and exports
2 of such items, and compliance with verification
3 programs.

4 (2) To restrict the export of items that would
5 directly, substantially, and materially contribute to
6 the military potential of countries so as to pose a
7 threat to the national security of the United States.

8 (3) To—

9 (A) minimize uncertainties in export con-
10 trol policy; and

11 (B) encourage trade with all countries with
12 which the United States has diplomatic or trad-
13 ing relations, except those countries with which
14 such trade has been determined by the Presi-
15 dent to be against the national interest.

16 (4) To restrict export trade when necessary to
17 protect the domestic economy from the excessive
18 drain of scarce materials and to reduce the serious
19 inflationary impact of foreign demand.

20 (5) To increase the reliance of the United
21 States upon multilateral coordination of controls
22 through effective export control regimes that—

23 (A) clearly identify countries and entities
24 to which items are to be controlled,

1 (B) incorporate lists of controlled items
2 that are truly critical to the control objectives,

3 (C) establish uniform criteria and proce-
4 dures for licensing, and

5 (D) implement means to curtail member
6 countries from granting licenses that render in-
7 effective license denials by the United States.

8 (6) To impose unilateral controls, under the
9 procedures and conditions set forth in section 106,
10 only when it is essential to the national security or
11 foreign policy of the United States, and only after
12 full consideration of the economic impact of the con-
13 trols and their effectiveness in achieving their in-
14 tended objectives.

15 (7) To make all licensing determinations in a
16 timely manner so undue delays in the licensing proc-
17 ess will not cause a United States firm to lose an
18 export sale.

19 (8) To maintain a presumption of approval of
20 license applications for authority to export items for
21 civil end use.

22 (9) To use export controls to encourage other
23 countries to take immediate steps to prevent the use
24 of their territories or resources to aid, encourage, or
25 give sanctuary to those persons involved in directing,

1 supporting, or participating in acts of international
2 terrorism.

3 (10)(A) To counteract restrictive trade prac-
4 tices or boycotts fostered or imposed by foreign
5 countries against other countries friendly to the
6 United States or against any United States person.

7 (B) To encourage and, in specified cases, re-
8 quire United States persons engaged in the export of
9 commodities, technology, and other information to
10 refuse to take actions, including furnishing informa-
11 tion or entering into or implementing agreements,
12 which have the effect of furthering or supporting the
13 restrictive trade practices or boycotts fostered or im-
14 posed by any foreign country against a country
15 friendly to the United States or against any United
16 States person.

17 (11) To consolidate export control functions
18 and increase administrative accountability, and
19 thereby better serve the exporting public by reducing
20 and eliminating overlapping, conflicting, and incon-
21 sistent regulatory burdens.

22 SEC. 104. GENERAL PROVISIONS.

23 (a) TYPES OF LICENSES.—Under such conditions as
24 the Secretary may impose, consistent with the provisions
25 of this title, the Secretary may require the following types

1 of licenses for exports of commodities and technology con-
 2 trolled under this title:

3 (1) SPECIFIC EXPORTS AND REEXPORTS.—An
 4 individual validated license, authorizing a specific ex-
 5 port.

6 (2) MULTIPLE EXPORTS AND REEXPORTS.—
 7 Validated licenses authorizing multiple exports, in
 8 lieu of an individual validated license for each such
 9 export.

10 (b) GENERAL PROHIBITION.—Notwithstanding any
 11 other provision of this title, no person may export any item
 12 which such person knows will materially contribute to a
 13 program or activity for the design, development, or manu-
 14 facture of a weapon of mass destruction or missile in a
 15 country that is not a member of, or a cooperating country
 16 with respect to, an export control regime controlling such
 17 weapon or missile.

18 (c) UNITED STATES COMMODITY CONTROL INDEX.—

19 (1) IN GENERAL.—The Secretary shall—

20 (A) establish and maintain a United States
 21 Commodity Control Index which shall identify
 22 all commodities and technology on which con-
 23 trols are imposed under this title;

24 (B) specify the license requirements appli-
 25 cable to the items on the control index; and

1 (C) designate countries and end users to
2 which exports of commodities and technology
3 are controlled.

4 (2) CONTENTS.—The control index shall—

5 (A) consist of a security control list of all
6 commodities and technology on which export
7 controls are imposed under section 105, an
8 emergency control list of all commodities and
9 technology on which export controls are im-
10 posed under section 106, and a short supply
11 control list of all commodities on which export
12 controls are imposed under section 107;

13 (B) for each item on the control index,
14 specify with particularity the performance
15 (where applicable) and other identifying charac-
16 teristics of the item and provide a rationale for
17 why the item is on the control list;

18 (C) identify countries and end users to
19 which exports are controlled, including specific
20 projects and end users of concern, cross-ref-
21 erenced with the list of commodities and tech-
22 nology on which export controls are imposed;
23 and

24 (D) be sufficiently specific and clear as to
25 guide exporters and licensing officers in deter-

1 minations of licensing requirements under this
2 title.

3 (3) LICENSING OF CONTROL INDEX COMMOD-
4 ITIES AND TECHNOLOGY.—A validated license may
5 be required for the export of those commodities and
6 technology that are specifically and clearly identified
7 on the control index to countries and end users so
8 designated on the control index. No authority or per-
9 mission may be required to export commodities and
10 technology not so identified to any country or end
11 user not so designated.

12 (d) DELEGATION OF AUTHORITY.—The President
13 may delegate the power, authority, and discretion con-
14 ferred upon him by this title to such departments, agen-
15 cies, and officials of the Government as he considers ap-
16 propriate, except that no authority under this title may
17 be delegated to, or exercised by, any official of any depart-
18 ment or agency the head of which is not appointed by the
19 President, by and with the advice and consent of the Sen-
20 ate. The President may not delegate or transfer his power,
21 authority, and discretion to overrule or modify any rec-
22 ommendation or decision made by the Secretary, the Sec-
23 retary of Defense, or the Secretary of State under this
24 title and may not delegate the authority under section
25 106(a)(4).

1 (e) NOTIFICATION OF THE PUBLIC; CONSULTATION
2 WITH BUSINESS.—The Secretary shall keep the public
3 fully apprised of changes in export control policy and pro-
4 cedures instituted in conformity with this title with a view
5 to encouraging trade. The Secretary shall consult regu-
6 larly with representatives of a broad spectrum of enter-
7 prises, labor organizations, and citizens interested in or
8 affected by export controls, in order to obtain their views
9 on United States export control policy and the foreign
10 availability of items subject to controls.

11 (f) EXPORT ADVISORY COMMITTEES.—

12 (1) APPOINTMENT.—Upon his or her own ini-
13 tiative or upon the written request of representatives
14 of a substantial segment of any industry which pro-
15 duces any items subject to export controls under this
16 title or being considered for such controls, the Sec-
17 retary shall appoint export advisory committees with
18 respect to any such items. Each such committee
19 shall consist of representatives of United States in-
20 dustry and Government, including the Department
21 of Commerce and other departments and agencies of
22 the Government, as appropriate. The Secretary shall
23 permit the widest possible participation by the busi-
24 ness community on the export advisory committees.

(2) FUNCTIONS.—Export advisory committees appointed under paragraph (1) shall advise and assist the Secretary, and any other department, agency, or official of the Government to which the President delegates authority under this title, on actions (including all aspects of controls imposed or proposed) designed to carry out the policies of this title concerning the items with respect to which such export advisory committees were appointed. Such committees, where they have expertise in such matters, shall be consulted on questions involving—

(A) technical matters,

(B) worldwide availability and actual utilization of production technology,

(C) licensing procedures which affect the level of export controls applicable to any items,

(D) revisions of the security control list (as provided in section 105(j); including proposed revisions of multilateral controls in which the United States participates,

(E) the issuance of regulations,

(F) the impact and interpretation of existing regulations,

(G) processes and procedures for review of licenses and policy,

1 (H) any other questions relating to actions
2 designed to carry out this title, and

3 (I) the operation and conduct of inter-
4 national business transactions.

5 Nothing in this subsection shall prevent the United
6 States Government from consulting, at any time,
7 with any person representing an industry or the gen-
8 eral public, regardless of whether such person is a
9 member of an export advisory committee. Members
10 of the public shall be given a reasonable opportunity,
11 pursuant to regulations prescribed by the Secretary,
12 to present evidence to such committees.

13 (3) REIMBURSEMENT OF EXPENSES.—Upon re-
14 quest of any member of any export advisory commit-
15 tee appointed under paragraph (1), the Secretary
16 may, if the Secretary determines it to be appro-
17 priate, reimburse such member for travel, subsist-
18 ence, and other necessary expenses incurred by such
19 member in connection with the duties of such mem-
20 ber.

21 (4) CHAIRPERSON.—Each export advisory com-
22 mittee appointed under paragraph (1) shall elect a
23 chairperson, and shall meet at least every 3 months
24 at the call of the chairperson, unless the chairperson
25 determines, in consultation with the other members

1 of the committee, that such a meeting is not nec-
2 essary to achieve the purposes of this subsection.
3 Each such committee shall be terminated after a pe-
4 riod of 2 years, unless extended by the Secretary for
5 additional periods of 2 years each. The Secretary
6 shall consult each such committee on such termi-
7 nation or extension of that committee.

8 (5) ACCESS TO INFORMATION.—To facilitate
9 the work of the export advisory committees ap-
10 pointed under paragraph (1), the Secretary, in con-
11 junction with other departments and agencies par-
12 ticipating in the administration of this title, shall
13 disclose to each such committee adequate informa-
14 tion, consistent with national security, pertaining to
15 the reasons for the export controls which are in ef-
16 fect or contemplated for the items or policies for
17 which that committee furnishes advice.

18 (6) POLICY ADVICE.—The Secretary shall ap-
19 point a group of knowledgeable individuals from
20 businesses affected by export controls to provide ad-
21 vice to the Secretary on export control policy issues.
22 The chairperson of such group shall represent export
23 advisory committees regarding review of control lists
24 maintained by export control regimes and United
25 States proposals to export control regimes.

1 (g) DEVELOPMENT AND REVIEW OF THE CONTROL
2 LIST.—The Secretary of State, in consultation with ap-
3 propriate departments and agencies, shall be responsible
4 for conducting negotiations with other countries regarding
5 multilateral arrangements for restricting the export of
6 items to carry out the policies of this title. All appropriate
7 departments and agencies shall consult among themselves
8 and with the appropriate export advisory committees ap-
9 pointed under subsection (f) to develop initial technical pa-
10 rameters and product definitions in connection with the
11 development of proposals within the United States Gov-
12 ernment to be made to multilateral regimes.

13 (h) RIGHT OF EXPORT.—No authority or permission
14 to export may be required under this Act, or under regula-
15 tions issued under this Act, except to carry out the policies
16 set forth in section 3 of this Act.

17 (i) INTERNATIONAL OBLIGATIONS UNDER TREA-
18 TIES.—Notwithstanding any other provision of this title
19 containing limitations on authority to control exports, the
20 Secretary, in consultation with the Secretary of State, may
21 impose controls on exports to a particular country or coun-
22 tries in order to fulfill obligations of the United States
23 under resolutions of the United Nations and under trea-
24 ties to which the United States is a party.

1 (j) FEES.—No fee may be charged in connection with
2 the submission or processing of an export license applica-
3 tion under this title.

4 SEC. 103. MULTILATERAL CONTROLS.

5 (a) AUTHORITY.—

6 (1) IN GENERAL.—In order to carry out the
7 policies set forth in paragraphs (1), (2), and (5) of
8 section 103, the President may, in accordance with
9 this section, prohibit or curtail the export of any
10 commodities or technology subject to the jurisdiction
11 of the United States, if such commodities and
12 technology—

13 (A) would directly, substantially, and ma-
14 terially enable a country or enduser to acquire
15 the capability to develop, produce, stockpile,
16 use, or deliver weapons of mass destruction; or

17 (B) would directly, substantially, and ma-
18 terially contribute to the military capability of
19 a country so as to pose a threat to the national
20 security of the United States.

21 (2) EXERCISE OF AUTHORITY.—The authority
22 granted by this subsection shall be implemented by
23 means of export licenses issued by the Secretary.

24 (3) CONSISTENCY WITH EXPORT CONTROL RE-
25 GIMES.—Any provision of this title that provides

1 that no authority or permission to export may be re-
2 quired under this section shall not apply to the ex-
3 tent that the applicable export control regime pro-
4 vides otherwise.

5 (b) SECURITY CONTROL LIST.—

6 (1) IN GENERAL.—(A) The Secretary shall, in
7 consultation with appropriate departments and agen-
8 cies, establish and maintain, as part of the control
9 index, a security control list, comprised of all com-
10 modities and technology on which export controls are
11 in effect under this section, and the countries or end
12 users to which the controls apply. The security con-
13 trol list shall clearly identify the specific commod-
14 ities and technology the export of which is con-
15 trolled, and each country and end user to which such
16 exports are controlled.

17 (B) If a determination under this paragraph af-
18 fects the items controlled by an export control re-
19 gime, the Secretary of State shall propose to that re-
20 gime any revisions that would be necessary as a re-
21 sult of the determination. Such determination shall
22 become effective only to the extent such revisions are
23 agreed to by the export control regime.

24 (2) CONTROLLED COMMODITIES AND TECH-
25 NOLOGY.—Export controls shall be imposed under

1 this section if, and may be imposed under this sec-
2 tion only if, the export controls are agreed to by an
3 export control regime which includes export control
4 purposes, items subject to control, policy of review
5 for license applications, and all controlled destina-
6 tions, end uses, and end users.

7 (3) CONTROLLED COUNTRIES AND END
8 USERS.—A country shall be designated a controlled
9 country, and an end user shall be designated a con-
10 trolled end user, with respect to a particular com-
11 modity or technology on the security control list if
12 exports of such commodity or technology to such
13 country or end user are controlled multilaterally pur-
14 suant to the agreement of an export control regime
15 described in paragraph (2).

16 (c) EXPORT LICENSING POLICIES FOR CONTROLLED
17 COUNTRIES AND CONTROLLED END USERS.—

18 (1) EXPORTS TO CONTROLLED COUNTRIES AND
19 END USERS.—

20 (A) IN GENERAL.—The Secretary shall re-
21 quire authority or permission to export com-
22 modities and technology on the security control
23 list to controlled countries and controlled end
24 users.

1 (B) PRESUMPTION OF APPROVAL FOR
2 CIVIL END USES.—Applications to export com-
3 modities or technology for civil end uses shall
4 carry a presumption of approval.

5 (C) PRESUMPTION OF DENIAL FOR CON-
6 TROLLED END USERS.—Exports to controlled
7 end users of commodities or technology on
8 which controls are in effect under this section
9 shall carry a presumption of denial.

10 (D) BASIS FOR DENIAL.—Licenses may be
11 denied under this section only if the commodity
12 or technology meets the requirements of sub-
13 paragraph (A) or (B) of subsection (a)(1).

14 (2) CIVIL END USE.—A determination under
15 paragraph (1)(B) of whether commodities or tech-
16 nology are for civil end use shall be based on the fol-
17 lowing criteria:

18 (A) Whether the stated end use is civil.

19 (B) Whether the civil application of the
20 commodities or technology is well established in
21 countries other than controlled countries.

22 (C) Whether the commodities or tech-
23 nology proposed for export are reasonable in
24 quantity and quality for the proposed end use.

1 (D) The risk of diversion to an unauthor-
2 ized use or consignee and whether such diver-
3 sion can be verified.

4 (d) EXPORT CONTROL REGIMES AND LICENSING
5 POLICIES.—For the purposes of creating effective multi-
6 lateral export controls and strengthening the controls im-
7 posed by export control regimes, the Secretary of State
8 shall, with respect to each export control regime, pursue
9 negotiations with other members of such regime to accom-
10 plish the following objectives:

11 (1) No license requirement for exports and re-
12 exports to or from members of the regime and to or
13 from countries who are cooperating countries with
14 respect to the regime.

15 (2) Development of a common list of commod-
16 ities and technology to which export controls are ap-
17 plied, and a common list of countries and end users
18 to which exports are controlled, by members of the
19 regime.

20 (3) Agreement on the same treatment, to be ap-
21 plied by all members of the regime, of exports and
22 reexports to members of the regime, cooperating
23 countries, and non-regime countries, which could in-
24 clude multilateral review of exports to controlled
25 countries and controlled end users and multilateral

1 sanctions to be applied to such countries and end
2 users, or to members of the regime and cooperating
3 countries who violate export controls imposed by the
4 regime.

5 (4) National procedures resulting in comparable
6 implementation and enforcement of export controls
7 among the members of the regime, including laws
8 providing appropriate civil and criminal penalties
9 and statutes of limitations sufficient to deter poten-
10 tial violations.

11 (5) Periodic meetings of high-level representa-
12 tives of governments participating in the regime for
13 the purpose of coordinating national export control
14 policies and issuing policy guidance for dissemina-
15 tion to exporters in participating countries.

16 (6) Establishment of procedures for regular
17 consultation among members of the regime on pro-
18 posed export license applications that includes con-
19 sultation with individuals with sufficient technical
20 expertise to assess the licensing status of exports
21 and to ensure the reliability of end users.

22 (7) Development of common procedures for en-
23 forcing the export controls agreed upon by the re-
24 gime, including adequate training and authority for

1 enforcement officers to investigate and prevent ille-
2 gal exports.

3 (8) Development of a common system of export
4 control documentation to verify the movement of
5 commodities and technology.

6 (9) Establishment of procedures for the coordi-
7 nation and exchange of information concerning viola-
8 tions of controls agreed to by the regime.

9 (10) Establishment of procedures for the co-
10 ordination and sharing of intelligence information on
11 controlled countries and controlled end users.

12 (11) The application of adequate national re-
13 sources to carry out paragraphs (1) through (10).

14 (e) INCENTIVES FOR COUNTRIES TO PARTICIPATE IN
15 OR COOPERATE WITH EXPORT CONTROL REGIMES.—

16 (1) GENERAL RULE FOR REGIMES.—Unless the
17 Secretary, in consultation with the Secretary of
18 State, determines that an existing export control re-
19 gime has failed to meet the objectives set forth in
20 subsection (d), exports to all countries that are
21 members of, or cooperating countries with respect
22 to, that regime shall be subject to the licensing
23 treatment set forth in this subsection. The Secretary
24 shall publish each certification under this paragraph
25 in the Federal Register.

1 (2) FAVORABLE LICENSING TREATMENT.—Ex-
2 cept as otherwise required by the Atomic Energy Act
3 of 1954, unless an export control regime is the sub-
4 ject of a determination under paragraph (1), no au-
5 thority or permission may be required for exports of
6 any commodity or technology controlled by such re-
7 gime to or from members of the regime or cooperat-
8 ing countries with respect to such regime.

9 (3) EXCEPTION.—If the Secretary determines
10 that a member of an export control regime, a co-
11 operating country with respect to such regime, or an
12 end user in a country that is such a regime member
13 or in such a cooperating country is engaging in a
14 pattern and practice of noncompliance with controls
15 agreed to by the regime—

16 (A) if the license treatment under para-
17 graph (2) is provided by the United States uni-
18 laterally, the Secretary shall terminate such
19 treatment with respect to that noncomplying
20 member, cooperating country, or end user dur-
21 ing the period in which the determination is in
22 effect; or

23 (B) in any other case the Secretary shall
24 seek a similar determination by the other mem-
25 bers of the regime concerning such noncompli-

1 ance and if such a determination is made, the
2 Secretary shall propose the suspension of favor-
3 able licensing treatment of exports to that non-
4 complying regime member, cooperating country,
5 or end user by all members of the regime dur-
6 ing the period in which that determination is in
7 effect.

8 (f) CREATION AND ENHANCEMENT OF MULTILAT-
9 ERAL CONTROL REGIMES.—

10 (1) EXPANSION OF MEMBERSHIP OF RE-
11 GIMES.—For each existing export control regime and
12 for each export control regime the United States
13 seeks to create, the Secretary of State, in consulta-
14 tion with the Secretary, shall seek—

15 (A) to expand the membership of the re-
16 gime to include all countries that produce or
17 trade items controlled pursuant to agreement
18 by the regime; and

19 (B) the adoption of procedures for effective
20 implementation of the rules and guidelines of
21 the regime through uniform and consistent in-
22 terpretations of export controls agreed to by the
23 regime.

1 (2) DISCLOSURE OF NONPROPRIETARY INFOR-
 2 MATION.—The Secretary of State shall propose the
 3 following to each export control regime:

4 (A) Full disclosure on a confidential basis
 5 to all members of the regime of all
 6 nonproprietary information relating to all li-
 7 censes granted for the export of items con-
 8 trolled by the regime.

9 (B) A list of controlled items of particular
 10 sensitivity for which such disclosure shall be
 11 given 15 days before the license is issued.

12 (g) TRANSPARENCY OF MULTILATERAL CONTROL
 13 REGIMES.—

14 (1) PUBLICATION OF INFORMATION ON EACH
 15 REGIME.—Within 6 months after the date of the en-
 16 actment of this Act, the Secretary shall publish in
 17 the Federal Register the following information with
 18 respect to export controls agreed to by each multilat-
 19 eral control regime:

20 (A) Purposes of the controls.

21 (B) Member countries of the regime.

22 (C) Licensing policy.

23 (D) Items subject to the controls, together
 24 with all public notes, understandings, and other

1 aspects of the agreement of the regime, and all
2 changes thereto.

3 (E) Controlled countries and controlled
4 end uses.

5 (F) Rules of interpretation.

6 (G) Major policy actions.

7 (H) The rules and procedures of the re-
8 gime for establishing and modifying any matter
9 described in subparagraphs (A) through (G)
10 and for reviewing export license applications.

11 (2) INFORMATION REGARDING CONTROLLED
12 END USERS.—The United States shall propose to
13 each export control regime to permit a member
14 country to publish in the Federal Register the con-
15 trolled end users (including projects of concern)
16 agreed to by the regime.

17 (3) NEW REGIMES.—Within 2 months after
18 joining or organizing a new export control regime,
19 the Secretary shall publish the information described
20 in subparagraphs (A) through (H) of paragraph (1)
21 and, subject to requirements imposed by such re-
22 gime, the Secretary shall publish the information de-
23 scribed in paragraph (2).

24 (4) PUBLICATION OF CHANGES.—The Secretary
25 shall publish in the Federal Register any changes in

1 the information published under this subsection
2 within 2 months after the applicable regime adopts
3 such changes.

4 (h) EFFECTIVENESS OF MULTILATERAL CONTROL
5 REGIMES AND IMPLEMENTATION BY THEIR MEMBERS.—

6 (1) ANNUAL EVALUATION.—At least once each
7 year, the Secretary shall evaluate the effectiveness of
8 each export control regime and the effectiveness of
9 the implementation of the regime by each of its
10 members, including the United States. Such evalua-
11 tion shall be included in the annual report issued
12 under section 115.

13 (2) CONTENTS.—The evaluation under para-
14 graph (1) shall include the following for the relevant
15 reporting period:

16 (A) Items not controlled by the export con-
17 trol regime that the United States believes
18 should be controlled if the regime is effectively
19 to achieve its control purposes.

20 (B) Countries that are sources of foreign
21 availability for each item controlled by agree-
22 ment of the regime. Such countries shall in-
23 clude both members of the regime and countries
24 that are not members of the regime.

1 (C) Countries that are risks for diverting
2 controlled items to controlled countries, end
3 uses, or end users.

4 (D) Member countries of the regime that
5 have not, in the judgment of the Secretary, im-
6 plemented the objectives set forth in subsection
7 (d).

8 (E) The extent to which the regime and
9 each of its members have adopted and are im-
10 plementing uniform licensing policies.

11 (F) The extent to which the licensing pol-
12 icy of the regime and each of its members ade-
13 quately prevents the export licensing decisions
14 of one member country from rendering ineffec-
15 tive the denial of license applications by another
16 member.

17 (3) COMMENTS.—Before beginning each evalua-
18 tion under this subsection, the Secretary shall re-
19 quest comments from the public and the export advi-
20 sory committees appointed under section 104(f) re-
21 garding the effectiveness of each export control re-
22 gime. The Secretary shall give the public at least 30
23 days to provide comments under this paragraph.

24 (i) FOREIGN AVAILABILITY.—

1 (1) FOREIGN AVAILABILITY TO CONTROLLED
2 COUNTRIES.—

3 (A)(i) The Secretary, in consultation with
4 the Secretary of Defense, other appropriate
5 Government departments and agencies, and ap-
6 propriate export advisory committees appointed
7 under section 104(f), shall review, on a continu-
8 ing basis, the availability of controlled items to
9 controlled countries from sources outside the
10 United States, including countries that partici-
11 pate with the United States in export control
12 regimes.

13 (ii) In any case in which the Secretary de-
14 termines under paragraph (3), in accordance
15 with procedures and criteria which the Sec-
16 retary shall establish by regulation, that any
17 items are available in fact, or will be available
18 in fact within 2 years in the future, to con-
19 trolled countries from such sources in sufficient
20 quantity and of comparable quality so that the
21 requirement of a validated license for the export
22 of such items is or would be ineffective in
23 achieving the purposes of this section, the
24 President shall actively pursue negotiations
25 with the governments of the appropriate foreign

1 countries for the purpose of eliminating such
2 availability.

3 (iii) No later than the commencement of
4 such negotiations, the President shall notify in
5 writing the Committee on Banking, Housing,
6 and Urban Affairs of the Senate and the Com-
7 mittee on Foreign Affairs of the House of Rep-
8 resentatives that he has begun such negotia-
9 tions and why he believes it is important that
10 export controls on the items involved be main-
11 tained to avoid a significant risk to the national
12 security interests of the United States.

13 (B) If, within 120 days after a determina-
14 tion of foreign availability described in subpara-
15 graph (A) is made, the foreign person or per-
16 sons that are or will be the source of such for-
17 eign availability have not taken the steps nec-
18 essary to eliminate such availability, the Presi-
19 dent shall propose to the export control regime
20 controlling the commodities or technology that
21 are the subject of the foreign availability
22 determination—

23 (i) that such controls be eliminated, or

24 (ii) that the participating governments
25 of the regime impose all of the following

1 sanctions on such foreign person or per-
2 sons:

3 (I) A prohibition on the export to
4 such person or persons of any items
5 controlled by such export control re-
6 gime.

7 (II) A prohibition on the import
8 of all articles that are the growth,
9 product, or manufacture of such per-
10 son or persons.

11 (III) A prohibition on procure-
12 ment by such governments of any
13 services, commodities, software, and
14 technology, or other products from or
15 produced by such person or persons.

16 (C) If, within 45 days after a proposal
17 under subparagraph (B) is made to an export
18 control regime, such regime has not agreed to
19 such proposal, the President shall either pro-
20 pose to such regime that the export controls on
21 the commodities or technology that are the sub-
22 ject of the foreign availability determination be
23 eliminated, or report to the Congress that he
24 has determined that elimination of the controls
25 would create a significant risk to the national

1 security interests of the United States. Such re-
2 port shall include the basis for such determina-
3 tion.

4 (2) NOTICE OF ALL FOREIGN AVAILABILITY AS-
5 SESSMENTS.—Whenever the Secretary undertakes a
6 foreign availability assessment under this subsection,
7 the Secretary shall publish notice of such assessment
8 in the Federal Register.

9 (3) PROCEDURES FOR MAKING DETERMINA-
10 TIONS.—

11 (A)(i) The Secretary shall make a foreign
12 availability determination under paragraph (1)
13 on the Secretary's own initiative, upon the cer-
14 tification of an export advisory committee ap-
15 pointed under section 104(f) with respect to the
16 commodities or technology concerning which the
17 certification is made, or upon receipt of an alle-
18 gation from an export license applicant that
19 such availability exists. In making any such de-
20 termination, the Secretary shall accept the rep-
21 resentations of applicants made in writing and
22 supported by reasonable evidence, unless such
23 representations are contradicted by reliable evi-
24 dence, including scientific or physical examina-

tion, expert opinion based upon adequate factual information, and intelligence information.

(ii) In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item subject to the determination, and scale of production.

(iii) For purposes of this subparagraph, "evidence" may include such items as foreign manufacturers' catalogues, brochures, operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

(B) At the same time as an export advisory committee submits a certification to the Secretary under subparagraph (A)(i), the committee shall submit the certification to the Congress. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the export advisory committee and the Congress stating that—

(i) the foreign availability does exist,
and the applicable steps are being taken
under paragraph (1); or

(ii) the foreign availability does not
exist.

To the extent necessary, the report may be submitted on a classified basis.

(C) Within 4 months after receiving an allegation described in subparagraph (A)(i) from an export license applicant, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any such department or agency. Not later than 30 days after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

1 (i) the foreign availability does exist,
2 and the applicable steps are being taken
3 under paragraph (1); or

4 (ii) the foreign availability does not
5 exist.

6 (4) SHARING OF INFORMATION.—Each depart-
7 ment or agency of the United States, including any
8 intelligence agency, and all contractors with any
9 such department or agency, shall, upon the request
10 of the Secretary and consistent with the protection
11 of intelligence source and methods, furnish informa-
12 tion to the Department of Commerce concerning for-
13 eign availability of items subject to export controls
14 under this section. Each such department or agency
15 shall allow the Department of Commerce access to
16 any information from a laboratory or other facility
17 within such department or agency.

18 (5) AVAILABILITY DEFINED.—For the purposes
19 of this subsection, the term “available in fact to con-
20 trolled countries” includes production or availability
21 of any item in any country—

22 (A) where the item is not restricted for ex-
23 port to any controlled country; or

24 (B) where the export restrictions are deter-
25 mined by the Secretary to be ineffective.

1 For purposes of subparagraph (B), the mere inclu-
2 sion of items on a list of items subject to multilat-
3 eral export controls shall not alone constitute credi-
4 ble evidence that a country provides an effective
5 means of controlling the export of such items to con-
6 trolled countries.

7 (6) CONGRESSIONAL NOTIFICATIONS.—The
8 Secretary shall annually notify the Committee on
9 Foreign Affairs of the House of Representatives,
10 and the Committee on Banking, Housing, and
11 Urban Affairs of the Senate, of all allegations of for-
12 eign availability received from export license appli-
13 cants under paragraph (3), and the actions of the
14 Secretary pursuant to such allegations.

15 (j) REVIEW OF CONTROLLED ITEMS.—

16 (1) IN GENERAL.—The Secretary shall review
17 all commodities and technology on the security con-
18 trol list maintained under subsection (b) at least an-
19 nually. At the conclusion of each review, the Sec-
20 retary shall justify the inclusion of each item on the
21 security control list, shall remove items from the se-
22 curity control list, change the specifications of items
23 on the list, or (in the case of a previously undevel-
24 oped technology) add items to the list, in order to
25 meet the requirements of subsection (a)(1). The Sec-

1 retary shall use the data developed from such re-
2 views in formulating United States proposals for re-
3 vision of multilateral controls in the applicable ex-
4 port control regimes.

5 (2) CONSIDERATIONS.—In conducting the an-
6 nual review, the Secretary shall—

7 (A) consult with the appropriate export ad-
8 visory committees appointed under section
9 104(f) and consider recommendations of such
10 committees with respect to proposed changes in
11 the security control list;

12 (B) consider the results of foreign avail-
13 ability determinations made under subsection
14 (i);

15 (C) consider comments received pursuant
16 to the notice of review provided under para-
17 graph (3)(B); and

18 (D) consult with other departments or
19 agencies as the Secretary considers appropriate.

20 (3) PROCEDURES.—

21 (A) DURATION OF REVIEW.—The annual
22 review required under paragraph (1) may not
23 extend beyond 180 days after such review is
24 begun.

1 (B) NOTICE OF REVIEW.—Before begin-
2 ning each annual review, the Secretary shall
3 publish a notice of that review in the Federal
4 Register and shall provide a 30-day period for
5 comments and submission of data, with or with-
6 out oral presentation, by interested Government
7 agencies, exporters, and other interested par-
8 ties.

9 (C) REVISIONS.—The Secretary shall make
10 a determination of any revisions in the security
11 control list not later than 30 days after the end
12 of the review period. In making such determina-
13 tion the Secretary shall consult with the appro-
14 priate departments or agencies. The concu-
15 rrence or approval of any other department or
16 agency shall not be required before any such re-
17 vision is made.

18 (D) PROPOSALS TO EXPORT CONTROL RE-
19 GIMES.—If a revision of the security control list
20 under this paragraph affects the items con-
21 trolled by an export control regime, the Sec-
22 retary of State shall propose such revision to
23 that regime. Such revision shall become effec-
24 tive only to the extent such revision is agreed
25 to by the export control regime.

1 (E) PUBLICATION OF REVISIONS.—The
2 Secretary shall publish in the Federal Register
3 any revisions in the list, with an explanation of
4 the reasons for the revisions.

5 (k) INDEXING.—The Secretary shall develop, with the
6 assistance of the export advisory committees appointed
7 under section 104(f), methodologies and procedures for in-
8 dexing items on the security control list where perform-
9 ance capabilities are relevant and measurable. Such meth-
10 odologies and procedures shall provide for increases in the
11 performance levels of commodities and technology on the
12 security control list and shall provide for the technical
13 specifications below which no authority or permission to
14 export is required as compared to the most technologically
15 advanced commercially available version of the same or
16 equivalent commodities or technology. Such methodologies
17 and procedures shall be published in the Federal Register
18 and used in the annual list review of the security control
19 list under subsection (j).

20 (l) REVIEW OF EXPORT CONTROLS ON COMPUTER
21 EQUIPMENT AND TECHNOLOGY.—

22 (1) IN GENERAL.—In order to ensure that re-
23 quirements of validated licenses are periodically re-
24 moved as computer equipment, computer commu-
25 nications and networking equipment, computer soft-

ware, and related technology, that are subject to such requirements become obsolete with respect to the specific objectives of the export controls requiring such licenses, the Secretary shall conduct periodic reviews of such controls. The Secretary shall complete such a review not later than 6 months after the date of the enactment of this title, and thereafter as part of the reviews conducted under subsection (j) not later than the end of each 1-year period thereafter.

(2) REVIEW ELEMENTS.—In conducting each review under paragraph (1), the Secretary shall do the following with respect to the export controls requiring a license described in paragraph (1):

(A) OBJECTIVES OF CONTROLS.—The Secretary shall identify the specific objectives of the export controls, for the 12-month period following completion of the review, for each country or group of countries for which a validated license is required. When an objective of an export control is to defer the development of a specific capability in such country or group of countries, the Secretary shall specify for what period of time the controls are expected to defer such capability.

1 (B) QUANTITY AND PERFORMANCE.—The
2 Secretary shall estimate, for the 12-month pe-
3 riod described in subparagraph (A), the quan-
4 tity and performance (measured in Composite
5 Theoretical Performance or other relevant per-
6 formance metrics) of computer systems that
7 must be obtained by each country or group of
8 countries for which a validated license is re-
9 quired in order to defeat the objectives of the
10 export controls.

11 (C) AVAILABILITY TO CONTROLLED DES-
12 TINATIONS.—The Secretary shall evaluate the
13 effectiveness of the export controls in achieving
14 their specific objectives, including explicit de-
15 scriptions of the availability from sources out-
16 side the United States, during the 12-month pe-
17 riod described in subparagraph (A), to con-
18 trolled countries of computer equipment, com-
19 puter communications and networking equip-
20 ment, computer software, and related tech-
21 nology on which the export controls are in ef-
22 fect.

23 (D) ECONOMIC IMPACT.—The Secretary
24 shall evaluate the economic impact, during the
25 12-month period described in subparagraph

1 (A), of the export controls on exporting compa-
2 nies, including estimates of lost sales, loss in
3 market share, and administrative overhead.

4 (3) INCREASE IN THRESHOLDS.—

5 (A) INCREASES.—After completing each
6 review under this subsection, the Secretary
7 shall, after consultation with appropriate de-
8 partments or agencies, increase, if warranted by
9 the findings of the review, the following export
10 control thresholds, consistent with the obliga-
11 tions of the United States under export control
12 regimes:

13 (i) The performance levels at which
14 computer systems are eligible for delivery
15 under a distribution license or other license
16 authorizing multiple exports.

17 (ii) The performance levels defining a
18 “supercomputer”.

19 (iii) The performance levels at which
20 an individual validated license is required
21 for the export to a controlled country of
22 computer systems and peripherals, soft-
23 ware, parts, and communications equip-
24 ment normally supplied with such com-
25 puter systems.

1 In any recommendation for or publication of
2 such increase, the Secretary shall include the
3 specific rationale for the increase.

4 (B) PROPOSALS TO MULTILATERAL RE-
5 GIMES.—The Secretary of State shall, within 30
6 days after a determination by the Secretary to
7 increase thresholds, propose to the other mem-
8 bers of the applicable export control regime the
9 elimination of the applicable controls on the
10 items with respect to which such determination
11 is made, in accordance with the procedures of
12 the regime, and publish a notice of such pro-
13 posal in the Federal Register.

14 (4) REPORT.—The Secretary shall transmit to
15 the Congress, and to any export advisory committee
16 appointed under section 104(f) with respect to com-
17 puter systems, a report on the findings of each re-
18 view conducted under this subsection, addressing
19 each requirement set forth in paragraph (2).

20 (5) HEARINGS.—The Secretary shall conduct
21 public hearings not less than once each year in order
22 to solicit information from all interested parties on
23 all matters to be addressed in each review conducted
24 under this subsection.

1 (6) REMOVAL OF CONTROLS ON MASS-MARKET
2 COMPUTER EQUIPMENT.—

3 (A) MASS-MARKET COMPUTER EQUIPMENT
4 DEFINED.—For purposes of this paragraph, the
5 term 'mass-market computer equipment' means
6 any computer system, computer networking
7 equipment, peripheral to a computer system,
8 part or subassembly of a computer system, or
9 combination thereof, on which export controls
10 are in effect under this section, and which will
11 have been installed for end use outside the
12 United States in a quantity exceeding 100,000
13 units over a 12-month period, as determined
14 under subparagraph (B).

15 (B) ANTICIPATORY REVIEW OF MASS-MAR-
16 KET COMPUTER EQUIPMENT.—Not later than—

17 (i) 6 months after the date of the en-
18 actment of this subsection, and

19 (ii) the end of each 1-year period oc-
20 ccurring thereafter,

21 the Secretary shall, in consultation with the
22 Computer Systems Technical Advisory Commit-
23 tee (or successor export advisory committee),
24 industry groups, and computer equipment pro-
25 ducers, identify those items described in sub-

paragraph (A) (including computer systems differentiated in terms of Composite Theoretical Performance) that will be installed for end use outside the United States in a quantity exceeding 100,000 units during the 12-month period beginning on the applicable date described in clause (i) or (ii). For purposes of this paragraph, estimates of numbers of items that will be installed shall be based on reliable estimates provided by producers of such items.

(C) ACTION BY THE SECRETARY.—Not later than 30 days after an item is determined by the Secretary under subparagraph (B) to be mass-market computer equipment, the Secretary shall propose to the export control regime controlling the equipment the elimination of controls on such equipment in accordance with the procedures of the appropriate regime and shall publish a notice of such proposal in the Federal Register.

(m) TRADE SHOWS.—Consistent with the agreements of applicable multilateral export control regimes, an application for a license for the export to a controlled country of any commodity on which export controls are in effect under this section, without regard to the technical speci-

1 fications of the commodity, for the purpose of demonstra-
2 tion or exhibition at a trade show shall carry a presump-
3 tion of approval if—

4 (1) the United States exporter retains title to
5 the commodity, and complies with any safeguard re-
6 quirement imposed by the Secretary, during the en-
7 tire period in which the commodity is in the con-
8 trolled country; and

9 (2) the exporter removes the commodity from
10 the controlled country within a reasonable period of
11 time after the conclusion of the trade show, as de-
12 fined in regulations issued by the Secretary.

13 **SEC. 106. EMERGENCY CONTROLS.**

14 (a) **AUTHORITY.—**

15 (1) **IN GENERAL.—**In order to carry out the
16 policy set forth in paragraphs (6) and (9) of section
17 103, the President may, in accordance with the pro-
18 visions of this section, unilaterally prohibit or curtail
19 the export of any commodity or technology subject
20 to the jurisdiction of the United States or exported
21 by any person subject to the jurisdiction of the Unit-
22 ed States.

23 (2) **EXERCISE OF AUTHORITY.—**The authority
24 contained in this section shall be exercised by the
25 Secretary, in consultation with the Secretary of

1 State, the Secretary of Defense, and such other de-
2 partments and agencies as the President considers
3 appropriate.

4 (3) EXPIRATION OF AUTHORITY.—

5 (A) IN GENERAL.—Any controls imposed
6 under this section shall expire 180 days after
7 they are imposed, unless they are terminated
8 earlier by the President, or unless they are ex-
9 tended under this section, adopted as multilat-
10 eral controls under section 105, or included in
11 an embargo described in subsection (f)(1) that
12 is imposed by the President under the Inter-
13 national Emergency Economic Powers Act, the
14 Trading with the Enemy Act, or other provision
15 of law other than this title, on all exports and
16 imports to a country. Any extension or subse-
17 quent extension of the controls under this sec-
18 tion shall be for a period of not more than 1
19 year each. The controls shall expire at the end
20 of each such extension unless they are termi-
21 nated earlier by the President, or unless they
22 are further extended under this section, adopted
23 as multilateral controls under section 105, or
24 included in an embargo described in the preced-
25 ing sentence.

1 (B) EXCEPTION FOR MULTILATERAL
2 AGREEMENTS.—Subparagraph (A) shall not
3 apply to controls imposed by the President in
4 order to fulfill obligations of the United States
5 under resolutions of the United Nations and
6 under treaties to which the United States is a
7 party. If such a resolution or treaty ceases to
8 be in effect, controls imposed by the President
9 pursuant to such resolution or treaty shall im-
10 mediately cease to be in effect.

11 (4) CRITERIA.—The President may impose con-
12 trols under this section only if the President—

13 (A) determines that the controls are essen-
14 tial to the national security or foreign policy of
15 the United States;

16 (B) determines that no other alternative
17 means can achieve the national security or for-
18 eign policy objectives of the United States with-
19 in a reasonable period of time, including but
20 not limited to denial of arms sales, foreign as-
21 sistance, military assistance, United States
22 Government procurement, Export Import Bank
23 assistance, Overseas Private Investment Cor-
24 poration assistance, and aircraft landing rights,
25 restrictions on imports from the country in-

1 involved, opposition to assistance from multilat-
2 eral development banks, and the suspension or
3 downgrading of diplomatic relations;

4 (C) determines that the controls can rea-
5 sonably be expected to achieve their intended
6 objectives after having taken into consideration
7 other factors, including the availability from
8 one or more countries of comparable commod-
9 ities and technology to those on which the con-
10 trols are to be imposed;

11 (D) determines that the United States has
12 the ability to enforce all aspects of the proposed
13 emergency effectively;

14 (E) determines that the effect of the pro-
15 posed controls on the export performance of the
16 United States, the competitive position of the
17 United States as a supplier of items, or on the
18 economic well-being of individual United States
19 companies and their employees and commu-
20 nities does not exceed the benefits to the for-
21 eign policy or national security interests of the
22 United States; and

23 (F) identifies those commodities and tech-
24 nology to be controlled and determines that
25 they must be controlled in order to achieve the

1 intended purpose of the controls and describes
2 the reasons for selecting such items.

3 (5) NEGOTIATIONS.—The President shall com-
4 mence, through the Secretary of State, within 10
5 days after the imposition of controls under this sec-
6 tion, negotiations with other countries to adopt the
7 controls so that such controls may be imposed under
8 section 105, unless such controls are imposed under
9 paragraph (3)(B).

10 (b) CONSULTATION WITH INDUSTRY.—The Sec-
11 retary in every possible instance shall consult with and
12 seek advice from affected United States industries and ex-
13 port advisory committees appointed under section 104(f)
14 before the imposition, expansion, or extension of any ex-
15 port control under this section.

16 (c) CONSULTATION WITH OTHER COUNTRIES.—
17 When expanding or extending export controls under this
18 section (unless such action is taken under subsection
19 (a)(3)), the Secretary of State, in consultation with the
20 Secretary, shall, at the earliest appropriate opportunity,
21 consult with the countries with which the United States
22 maintains export controls cooperatively, and with other
23 countries, as appropriate, to advise them of the reasons
24 for the action and to urge them to adopt similar controls,
25 so that the controls may be imposed under section 105.

1 (d) CONSULTATIONS WITH THE CONGRESS.—

2 (1) CONSULTATIONS.—The Secretary, in con-
3 sultation with the Secretary of State, may impose,
4 expand, or extend export controls under this section
5 only after consultation with the Congress, including
6 the Committee on Foreign Affairs of the House of
7 Representatives and the Committee on Banking,
8 Housing, and Urban Affairs of the Senate.

9 (2) REPORTS.—The Secretary may not impose
10 or expand controls under subsection (a) until the
11 Secretary has submitted to the Congress a report—

12 (A) addressing each of the criteria set
13 forth in subparagraphs (A) through (F) of sub-
14 section (a)(4);

15 (B) specifying the purpose of the controls;

16 (C) describing the nature, the subjects,
17 and the results of, or plans for, the consultation
18 with industry under subsection (b) and with
19 other countries under subsections (a)(5) and
20 (c);

21 (D) specifying the nature and results of
22 any alternative means attempted to achieve the
23 objectives of the controls, or the reasons for im-
24 posing or expanding the controls without at-
25 tempting any such alternative means; and

1 (E) describing the availability from other
2 countries of items comparable to the items sub-
3 ject to the controls, and describing the nature
4 and results of the efforts made to secure the co-
5 operation of foreign governments in controlling
6 the foreign availability of such comparable com-
7 modities or technology.

8 Such report shall also indicate how such controls will
9 further significantly the policies of the United States
10 as set forth in section 103 or will further its de-
11 clared international obligations.

12 (3) SUBMISSION OF REPORT TO GAO.—Each re-
13 port required by paragraph (2) shall, at the same
14 time it is submitted to the Congress, also be submit-
15 ted to the General Accounting Office for the purpose
16 of assessing the report's full compliance with the in-
17 tent of this subsection.

18 (e) SEEKING MULTILATERAL SUPPORT FOR UNILAT-
19 ERAL CONTROLS.—The Secretary and the Secretary of
20 State shall have a continuing duty to seek support, by
21 other countries and by multilateral export control regimes,
22 for all controls imposed under this section.

23 (f) PROCEDURES AND LIMITATIONS ON EMERGENCY
24 CONTROLS.—

1 (1) IMPOSITION OF AN EMBARGO.—An embargo
2 under paragraph (1)(C) shall include the prohibition
3 of all exports to and imports from the country
4 against which the controls under this section were
5 imposed, except as provided in section 114(k).

6 (2) CESSATION OF EMERGENCY CONTROLS.—

7 (A) IN GENERAL.—Controls imposed under
8 this section on commodities or technology shall
9 cease to be in effect immediately upon—

10 (i) the imposition of multilateral con-
11 trols under section 105 on the same com-
12 modities and technology to the country or
13 end user with respect to which the controls
14 were imposed under this section; or

15 (ii) the imposition, under the Inter-
16 national Emergency Economic Powers Act,
17 the Trading with the Enemy Act, or other
18 provision of law, of an embargo described
19 in paragraph (1).

20 (B) CONVERSION TO MULTILATERAL
21 AGREEMENTS.—If the President imposes con-
22 trols on commodities or technology to a country
23 or end user under this section in order to fulfill
24 obligations of the United States under resolu-
25 tions of the United Nations or under a treaty

1 to which the United States is a party, any con-
2 trols imposed prior thereto under this section
3 on the same commodities or technology to the
4 same country or end user shall immediately
5 cease to be in effect.

6 (3) LIMITATIONS ON REIMPOSITION.—Controls
7 which have ceased to be in effect under subsection
8 (a)(3), and which have not been extended under sub-
9 section (g), may not be reimposed by the President
10 under subsection (a) for a period of 1 year beginning
11 on the date on which the original controls expire.

12 (g) EXTENSION OF EMERGENCY CONTROLS.—

13 (1) REPORT.—If the President decides to ex-
14 tend controls imposed under subsection (a), which
15 are due to expire under subsection (a)(3), the Presi-
16 dent shall, not later than 60 calendar days before
17 the expiration of such controls, transmit to the Con-
18 gress a report on the proposed extension, setting
19 forth the reasons for the proposed extension in detail
20 and specifying the period of time, which may not ex-
21 ceed 1 year, for which the controls are proposed to
22 be extended. In particular, such report shall—

23 (A) contain determinations by the
24 President—

1 (i) that the controls continue to be es-
2 sential to the national security or foreign
3 policy of the United States;

4 (ii) that no other alternative means
5 can achieve the national security or foreign
6 policy objectives of the United States with-
7 in a reasonable period of time, as described
8 in subsection (a)(4)(B);

9 (iii) that the United States has dem-
10 onstrated the ability to enforce all aspects
11 of the controls effectively; and

12 (iv) that the effect of the controls on
13 those factors described in subsection
14 (a)(4)(E) has not exceeded the benefits to
15 the foreign policy or national security inter-
16 ests of the United States;

17 (B) identify those commodities and tech-
18 nology to be controlled and determines that
19 they must be controlled in order to achieve the
20 intended purpose of the emergency controls and
21 describes the reasons for selecting such items;

22 (C) specify the reasons why negotiations
23 required under subsection (a)(5) or (c) failed to
24 result in the adoption of the controls under sec-

tion 105, and the prospects for the multilateral adoption of such controls;

(D) specify the reasons why a total embargo on all exports and imports is not presently justified to achieve the national security or foreign policy objectives of the United States;

(E) include an assessment by the Secretary of the economic consequences of the controls during the preceding 4 months, including estimates of any lost United States exports and jobs;

(F) include an assessment by the Secretary of State of the objectives of the controls and the extent to which the controls have attained those objectives over the preceding 4 months; and

(G) include an assessment by the Secretary of Defense of the impact the controls have had in the preceding 4 months on the national security of the United States.

(2) CONSIDERATION OF EXTENSION.—If the Congress, not later than 60 calendar days after the date of its receipt of the report under paragraph (1), adopts a joint resolution pursuant to paragraph (3) approving the extension of the controls, then such controls shall remain in effect for the period speci-

1 fied in the report or until terminated by the Presi-
2 dent, whichever occurs first, but in no case longer
3 than 1 year after the date on which the controls
4 would otherwise expire under subsection (a)(3). If
5 the Congress, within 60 calendar days after the date
6 of its receipt of such report, fails to adopt a joint
7 resolution approving the extension of such controls,
8 then such controls shall cease to be effective upon
9 the expiration of that 60-day period.

10 (3) JOINT RESOLUTIONS.—

11 (A) DEFINITION.—For purposes of this
12 paragraph, the term “joint resolution” means
13 only a joint resolution the matter after the re-
14 solving clause of which is as follows: “That,
15 pursuant to section 106(g) of the Export Act of
16 1994, the President may extend emergency con-
17 trols as specified in the report submitted to the
18 Congress on _____.”,
19 with the blank space being filled with the ap-
20 propriate date.

21 (B) INTRODUCTION.—On the day on which
22 a report is submitted to the House of Rep-
23 resentatives and the Senate under paragraph
24 (1), a joint resolution with respect to the exten-
25 sion of controls specified in such report shall be

1 introduced (by request) in the House of Rep-
2 resentatives by the chairman of the Committee
3 on Foreign Affairs, for the chairman and the
4 ranking minority member of the Committee, or
5 by Members of the House designated by the
6 chairman and ranking minority member; and
7 shall be introduced (by request) in the Senate
8 by the majority leader of the Senate, for himself
9 and the minority leader of the Senate, or by
10 Members of the Senate designated by the ma-
11 jority leader and the minority leader of the Sen-
12 ate. If either House of Congress is not in ses-
13 sion on the day on which such a report is sub-
14 mitted, the joint resolution shall be introduced
15 in that House, as provided for in the preceding
16 sentence, on the first day thereafter on which
17 that House is in session.

18 (C) COMMITTEE REFERRALS.—All joint
19 resolutions introduced in the House of Rep-
20 resentatives shall be referred to the Committee
21 on Foreign Affairs and all joint resolutions in-
22 troduced in the Senate shall be referred to the
23 Committee on Banking, Housing, and Urban
24 Affairs.

1 (D) DISCHARGE.—If the Committee of ei-
2 ther House to which a joint resolution has been
3 referred has not reported the joint resolution by
4 the end of 30 calendar days after its referral,
5 the committee shall be discharged from further
6 consideration of the joint resolution or of any
7 other joint resolution introduced with respect to
8 the same matter.

9 (E) CONSIDERATION.—(i) Subject to
10 clause (ii), a joint resolution under this para-
11 graph shall be considered in the Senate in ac-
12 cordance with the provisions of section
13 601(b)(4) of the International Security Assist-
14 ance and Arms Export Control Act of 1976.
15 For the purpose of expediting the consideration
16 and passage of joint resolutions reported or dis-
17 charged under this paragraph, it shall be in
18 order for the Committee on Rules of the House
19 of Representatives to present for consideration
20 a resolution of the House of Representatives
21 providing procedures for the immediate consid-
22 eration of a joint resolution under this para-
23 graph which may be similar, if applicable, to
24 the procedures set forth in section 601(b)(4) of

1 the International Security Assistance and Arms
2 Export Control Act of 1976.

3 (ii) No amendment to a joint resolution
4 shall be in order in either the House of Rep-
5 resentatives or the Senate; and no motion to
6 suspend the application of this clause shall be
7 in order in either House, nor shall it be in order
8 in either House for the Presiding Officer to en-
9 tertain a request to suspend the application of
10 this clause by unanimous consent.

11 (F) DUPLICATIVE RESOLUTIONS.—In the
12 case of a joint resolution described in subpara-
13 graph (A), if, before the passage by one House
14 of a joint resolution of that House, that House
15 receives a resolution with respect to the same
16 matter from the other House, then—

17 (i) the procedure in that House shall
18 be the same as if no joint resolution had
19 been received from the other House; and

20 (ii) the vote on final passage shall be
21 on the joint resolution of the other House.

22 (4) RENEWAL OF CONTROLS.—If, upon the
23 expiration of the emergency controls extended
24 under this subsection, the President determines
25 that a further extension of emergency controls

1 for an additional period of time of not more
2 than 1 year is necessary, paragraphs (1)
3 through (3) shall apply to such further exten-
4 sion.

5 (5) CALCULATION OF TIME PERIODS.—For pur-
6 poses of calculating calendar days under this sub-
7 section, there shall be excluded the days on which ei-
8 ther House of Congress is not in session because of
9 an adjournment of more than 3 days to a day cer-
10 tain or because of an adjournment of the Congress
11 sine die.

12 (h) EFFECT ON OTHER AUTHORITY.—

13 (1) EMBARGO AUTHORITY.—Nothing in this
14 section shall be construed to limit the authority of
15 the President to impose an embargo on all exports
16 to, and imports from, a specific country (except for
17 exports of commodities on which export controls may
18 not be imposed under section 114(k)) under the
19 International Emergency Economic Powers Act, the
20 Trading with the Enemy Act, or other provision of
21 law (other than this title). In any case in which the
22 President exercises any such authority to impose an
23 embargo, the requirements of this section shall not
24 apply for so long as such embargo is in effect.

(2) EFFECT ON EXISTING EMBARGOES.—(A)

Nothing in this section affects the authorities conferred upon the President by section 5(b) of the Trading with the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before that date, and are being exercised on the date of the enactment of this Act.

(B) Nothing in this section affects the authori-

ties conferred upon the President by the International Economic Powers Act or other provision of law (other than the Export Administration Act of 1979), which were being exercised with respect to a country before the date of the enactment of this Act as a result of a national emergency declared by the President before that date, and are being exercised with respect to such country on such date of enactment.

(i) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—

(1) PROHIBITION ON EXPORTS.—(A) Notwith-

standing subsection (a)(3)(A) or (a)(4), no export or reexport of commodities or technology described in subparagraph (B) may be made to any country the government of which the Secretary of State has de-

1 terminated has repeatedly provided support for acts of
2 international terrorism.

3 (B) The commodities or technology referred to
4 in subparagraph (A) are—

5 (i) any commodities or technology the ex-
6 port of which is controlled under this title pur-
7 suant to the Missile Technology Control Re-
8 gime, the Australia Group, or controlled under
9 this title pursuant to section 309(c) of the Nu-
10 clear Non-Proliferation Act of 1978,

11 (ii) any commodities or technology de-
12 scribed in section 105(a)(1)(B) the export of
13 which is controlled under section 105, and

14 (iii) any commodities or technology the ex-
15 port of which could make a significant contribu-
16 tion to the military potential of a country de-
17 scribed in subparagraph (A), including its mili-
18 tary logistics capability, or could enhance the
19 ability of such country to support acts of inter-
20 national terrorism,

21 other than commodities or technology that the Presi-
22 dent determines will be used only for humanitarian
23 purposes. A validated license shall be required for
24 the export under this paragraph of any such com-

1 commodities or technology that will be used only for hu-
2 manitarian purposes.

3 (2) NOTIFICATION OF CONGRESS OF LICENSES
4 ISSUED.—The Secretary and the Secretary of State
5 shall notify the Committee on Foreign Affairs of the
6 House of Representatives and the Committee on
7 Banking, Housing, and Urban Affairs and the Com-
8 mittee on Foreign Relations of the Senate at least
9 30 days before issuing any validated license under
10 this title for exports to a country the government of
11 which the Secretary of State has determined has re-
12 peatedly provided support for acts of international
13 terrorism.

14 (3) PUBLICATION OF DETERMINATIONS.—Each
15 determination of the Secretary of State under para-
16 graph (1)(A), and each determination under section
17 6(j)(1)(A) of the Export Administration Act of 1979
18 in effect at the time such Act expired, shall be pub-
19 lished in the Federal Register.

20 (4) RESCISSION OF DETERMINATIONS.—A de-
21 termination made by the Secretary of State under
22 paragraph (1)(A) may not be rescinded unless the
23 President submits to the Speaker of the House of
24 Representatives and the chairman of the Committee
25 on Banking, Housing, and Urban Affairs and the

1 chairman of the Committee on Foreign Relations of
2 the Senate—

3 (A) before the proposed rescission would
4 take effect, a report certifying that—

5 (i) there has been a fundamental
6 change in the leadership and policies of the
7 government of the country concerned;

8 (ii) that government is not supporting
9 acts of international terrorism; and

10 (iii) that government has provided as-
11 surances that it will not support acts of
12 international terrorism in the future; or

13 (B) at least 45 days before the proposed
14 rescission would take effect, a report justifying
15 the rescission and certifying that—

16 (i) the government concerned has not
17 provided any support for international ter-
18 rorism during the preceding 6-month pe-
19 riod; and

20 (ii) the government concerned has
21 provided assurances that it will not sup-
22 port acts of international terrorism in fu-
23 ture.

1 (5) WAIVER OF PROHIBITIONS.—The President
2 may waive the prohibitions contained in paragraph
3 (1)(A) with respect to a specific transaction if—

4 (A) the President determines that the
5 transaction is essential to the national security
6 interests of the United States; and

7 (B) not less than 30 days prior to the pro-
8 posed transaction, the President—

9 (i) consults with the Committee on
10 Foreign Affairs of the House of Represent-
11 atives and the Committee on Foreign Rela-
12 tions of the Senate regarding the proposed
13 transaction; and

14 (ii) submits to the Speaker of the
15 House of Representatives and the chair-
16 man of the Committee on Foreign Rela-
17 tions of the Senate a report containing—

18 (I) the name of any country in-
19 volved in the proposed transaction,
20 the identity of any recipient of the
21 items to be provided pursuant to the
22 proposed transaction, and the antici-
23 pated use of those items;

24 (II) a description of the items in-
25 volved in the proposed transaction (in-

1 cluding their market value) and the
2 actual sale price at each step in the
3 transaction;

4 (III) the reasons why the pro-
5 posed transaction is essential to the
6 national security interests of the Unit-
7 ed States and the justification for
8 such proposed transaction;

9 (IV) the date on which the pro-
10 posed transaction is expected to occur;
11 and

12 (V) the name of every United
13 States Government department, agen-
14 cy, or other entity involved in the pro-
15 posed transaction, and every foreign
16 government involved in the proposed
17 transaction.

18 To the extent possible, the information specified in
19 clause (ii) of subparagraph (B) shall be provided in
20 unclassified form, with any classified information
21 provided in an addendum to the report.

22 (6) MULTILATERAL REGIMES.—The Secretary
23 of State shall propose to COCOM, to the Australia
24 Group, to the countries participating in the Missile
25 Technology Control Regime, and to the Nuclear

Suppliers Group, that each such group adopt those controls that are imposed by this subsection on exports of commodities or technology subject to control by such group. The Secretary of State shall continue to make such proposals until such export controls are so adopted.

(7) EFFECT ON OTHER LAWS.—The provisions of this subsection do not affect any other provision of law to the extent such other provision imposes greater restrictions on exports to any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism than are imposed under this subsection.

(j) CRIME CONTROL INSTRUMENTS.—

(1) VALIDATED LICENSE REQUIRED.—Notwithstanding subsection (a)(3)(A) or (a)(4), crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license.

(2) CONSULTATION WITH SECRETARY OF STATE.—

(A) ITEMS ON CONTROL LIST.—Any determination of the Secretary of what commodities or technology shall be included on the control

1 index as a result of the export restrictions im-
2 posed by this subsection shall be made after
3 consultation with the Secretary of State.

4 (B) ACTION ON LICENSE APPLICATION.—

5 Any determination of the Secretary to approve
6 or deny an export license application to export
7 crime control or detection instruments or equip-
8 ment shall be made after consultation with the
9 Secretary of State.

10 (3) DISPUTE RESOLUTION.—If the Secretary of
11 State does not agree with the Secretary with respect
12 to any determination under paragraph (2), the Sec-
13 retary of State shall refer the matter to the Presi-
14 dent for resolution.

15 (4) EXCEPTIONS.—The provisions of this sub-
16 section shall not apply with respect to exports to
17 countries which are members of the North Atlantic
18 Treaty Organizations or to Japan, Australia, or New
19 Zealand, or to such other countries as the President
20 shall designate consistent with the purposes of this
21 subsection and section 502B of the Foreign Assist-
22 ance Act of 1961.

23 (k) SPARE PARTS.—At the same time as the Presi-
24 dent imposes or expands export controls under this sec-
25 tion, the President shall determine whether such export

1 controls will apply to replacement parts or parts in com-
2 modities subject to such export controls.

3 SEC. 107. SHORT SUPPLY CONTROLS.

4 (a) AUTHORITY.—

5 (1) IN GENERAL.—In order to carry out the
6 policy set forth in section 103(4), the President may
7 prohibit or curtail the export of any commodities
8 subject to the jurisdiction of the United States or
9 exported by any person subject to the jurisdiction of
10 the United States. In curtailing exports to carry out
11 the policy set forth in section 103(4), the President
12 shall allocate a portion of export licenses on the
13 basis of factors other than a prior history of expor-
14 tation. Such factors shall include the extent to which
15 a country engages in equitable trade practices with
16 respect to United States commodities and treats the
17 United States equitably in times of short supply.

18 (2) PUBLIC PARTICIPATION.—Upon imposing
19 quantitative restrictions on exports of any commod-
20 ities to carry out the policy set forth in section
21 103(4), the Secretary shall include in a notice pub-
22 lished in the Federal Register with respect to such
23 restrictions an invitation to all interested parties to
24 submit written comments within 15 days from the
25 date of publication on the impact of such restrictions

1 and the method of licensing used to implement
2 them.

3 (3) LICENSE FEES.—In imposing export con-
4 trols under this section, the President's authority
5 shall include, but not be limited to, the imposition
6 of export license fees.

7 (b) MONITORING.—

8 (1) IN GENERAL.—In order to carry out the
9 policy set forth in section 103(4), the Secretary shall
10 monitor exports, and contracts for exports, of any
11 commodity when the volume of such exports in rela-
12 tion to domestic supply contributes, or may contrib-
13 ute, to an increase in domestic prices or a domestic
14 shortage, and such price increase or shortage has, or
15 may have, a serious adverse impact on the economy
16 or any sector thereof. Any such monitoring shall
17 commence at a time adequate to assure that the
18 monitoring will result in a data base sufficient to en-
19 able policies to be developed, in accordance with sec-
20 tion 103(4), to mitigate a short supply situation or
21 serious inflationary price rise or, if export controls
22 are needed, to permit imposition of such controls in
23 a timely manner. Information which the Secretary
24 requires to be furnished in effecting such monitoring

1 shall be confidential, except as provided in para-
2 graph (2).

3 (2) REPORTS ON MONITORING.—The results of
4 monitoring under paragraph (1) shall, to the extent
5 practicable, be aggregated and included in weekly re-
6 ports setting forth, with respect to each item mon-
7 itored, actual and anticipated exports, the destina-
8 tion by country, and the domestic and worldwide
9 price, supply, and demand. Such reports may be
10 made monthly if the Secretary determines that there
11 is insufficient information to justify weekly reports.

12 (3) CONSULTATION WITH SECRETARY OF EN-
13 ERGY.—The Secretary shall consult with the Sec-
14 retary of Energy to determine whether monitoring or
15 export controls under this section are warranted
16 with respect to exports of facilities, machinery, or
17 equipment normally and principally used, or in-
18 tended to be used, in the production, conversion, or
19 transportation of fuels and energy (except nuclear
20 energy), including, but not limited to, drilling rigs,
21 platforms, and equipment; petroleum refineries, nat-
22 ural gas processing, liquefaction, and gasification
23 plants; facilities for production of synthetic natural
24 gas or synthetic crude oil; oil and gas pipelines,
25 pumping stations, and associated equipment; and

1 vessels for transporting oil, gas, coal, and other
2 fuels.

3 (c) PETITIONS FOR MONITORING OR CONTROLS OF
4 METALLIC MATERIALS.—

5 (1) IN GENERAL.—(A) Any entity, including a
6 trade association, firm, or certified or recognized
7 union or group of workers, that is representative of
8 an industry or a substantial segment of an industry
9 that processes metallic materials capable of being re-
10 cycled may transmit a written petition to the Sec-
11 retary requesting the monitoring of exports or the
12 imposition of export controls, or both, with respect
13 to any such material, in order to carry out the policy
14 set forth in section 103(4).

15 (B) Each petition shall be in such form as the
16 Secretary shall prescribe and shall contain informa-
17 tion in support of the action requested. The petition
18 shall include any information reasonably available to
19 the petitioner indicating that each of the criteria set
20 forth in paragraph (3)(A) of this subsection is satis-
21 fied.

22 (2) PUBLICATION OF NOTICE.—Within 15 days
23 after receipt of any petition described in paragraph
24 (1), the Secretary shall publish a notice in the Fed-
25 eral Register. The notice shall—

1 (A) include the name of the material that
2 is the subject to the petition,

3 (B) include the schedule B number of the
4 material as set forth in the Statistical Classi-
5 fication of Domestic and Foreign Commodities
6 Exported from the United States,

7 (C) indicate whether the petition is re-
8 questing that controls or monitoring, or both,
9 be imposed with respect to the exportation of
10 such material, and

11 (D) provide that interested persons shall
12 have a period of 30 days beginning on the date
13 of publication of such notice to submit to the
14 Secretary written data, views, or arguments,
15 with or without opportunity for oral presen-
16 tation, with respect to the matter involved.

17 At the request of the petitioner or any other entity
18 described in paragraph (1)(A) with respect to the
19 material which is the subject of the petition, or at
20 the request of any entity representative of producers
21 or exporters of such material, the Secretary shall
22 conduct public hearings with respect to the subject
23 of the petition, in which case the 30-day period may
24 be extended to 45 days.

(3) DETERMINATION OF MONITORING OR CONTROLS.—(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition in order to carry out the policy set forth in section 103(4). In making such determination, the Secretary shall determine whether—

(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

(ii) there has been a significant increase in domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly affect the national economy or any sector thereof, including a domestic industry; and

1 (v) monitoring or controls, or both, are
2 necessary in order to carry out the policy set
3 forth in section 103(4).

4 (B) The Secretary shall publish in the Federal
5 Register a detailed statement of the reasons for the
6 Secretary's determination under subparagraph (A)
7 of whether to impose monitoring or controls, or
8 both, including the findings of fact in support of
9 that determination.

10 (4) PUBLICATION OF REGULATIONS.—Within
11 15 days after making a determination under para-
12 graph (3) to impose monitoring or controls on the
13 export of a material, the Secretary shall publish in
14 the Federal Register proposed regulations with re-
15 spect to such monitoring or controls. Within 30 days
16 after the publication of such proposed regulations,
17 and after considering any public comments on the
18 proposed regulations, the Secretary shall publish and
19 implement final regulations with respect to such
20 monitoring or controls.

21 (5) CONSOLIDATION OF PETITIONS.—For pur-
22 poses of publishing notices in the Federal Register
23 and scheduling public hearings pursuant to this sub-
24 section, the Secretary may consolidate petitions, and

1 responses to such petitions, which involve the same
2 or related materials.

3 (6) SUBSEQUENT PETITIONS ON SAME MATE-
4 RIAL.—If a petition with respect to a particular ma-
5 terial or group of materials has been considered in
6 accordance with all the procedures described in this
7 subsection, the Secretary may determine, in the ab-
8 sence of significantly changed circumstances, that
9 any other petition with respect to the same material
10 or group of materials which is filed within 6 months
11 after the consideration of the prior petition has been
12 completed does not merit complete consideration
13 under this subsection.

14 (7) PRECEDENCE OF PROCEDURES OVER
15 OTHER REVIEWS.—The procedures and time limits
16 set forth in this subsection with respect to a petition
17 filed under this subsection shall take precedence over
18 any review undertaken at the initiative of the Sec-
19 retary with respect to the same subject as that of
20 the petition.

21 (8) TEMPORARY CONTROLS.—The Secretary
22 may impose monitoring or controls, on a temporary
23 basis, on the export of a metallic material after a pe-
24 tition is filed under paragraph (1)(A) with respect to
25 that material but before the Secretary makes a de-

1 termination under paragraph (3) with respect to
2 that material only if—

3 (A) the failure to take such temporary ac-
4 tions would result in irreparable harm to the
5 entity filing the petition, or to the national
6 economy or segment thereof, including a domes-
7 tic industry, and

8 (B) the Secretary considers such action to
9 be necessary to carry out the policy set forth in
10 section 103(4).

11 (9) OTHER AUTHORITY NOT AFFECTED.—The
12 authority under this subsection shall not be con-
13 strued to affect the authority of the Secretary under
14 any other provision of this title, except that if the
15 Secretary determines, on the Secretary's own initia-
16 tive, to impose monitoring or controls, or both, on
17 the export of metallic materials capable of being re-
18 cycled, under the authority of this section, the Sec-
19 retary shall publish the reasons for such action in
20 accordance with paragraph (3)(A) and (B).

21 (10) SUBMISSION AND CONSIDERATION OF AD-
22 DITIONAL INFORMATION.—Nothing contained in this
23 subsection shall be construed to preclude submission
24 on a confidential basis to the Secretary of informa-
25 tion relevant to a decision to impose or remove mon-

1 itoring or controls under the authority of this title,
2 or to preclude consideration of such information by
3 the Secretary in reaching decisions required under
4 this subsection. The provisions of this paragraph
5 shall not be construed to affect the applicability of
6 section 552(b) of title 5, United States Code.

7 (d) DOMESTICALLY PRODUCED CRUDE OIL.—

8 (1) PROHIBITION ON EXPORTS.—Notwithstanding
9 ing any other provision of this title and notwithstanding
10 subsection (u) of section 28 of the Mineral
11 Leasing Act of 1920 (30 U.S.C. 185), no domestically
12 cally produced crude oil transported by pipeline over
13 right-of-way granted pursuant to section 203 of the
14 Trans-Alaska Pipeline Authorization Act (43 U.S.C.
15 1652) may, subject to paragraph (2), be exported
16 from the United States, except any such crude oil
17 which—

18 (A) is exported to an adjacent foreign
19 country to be refined and consumed therein in
20 an exchange that—

21 (i) is for the same quantity of crude
22 oil being exported from that country to the
23 United States; and

24 (ii) results through convenience or in-
25 creased efficiency of transportation in

1 lower prices for consumers of petroleum
2 products in the United States as described
3 in paragraph (2)(A)(ii);

4 (B) is temporarily exported for convenience
5 or increased efficiency of transportation across
6 parts of an adjacent foreign country and reen-
7 ters the United States; or

8 (C) is transported to Canada, to be
9 consumed therein, in amounts not to exceed an
10 annual average of 50,000 barrels per day, in
11 addition to exports under subparagraphs (A)
12 and (B), except that any ocean transportation
13 of such oil shall be by vessels documented under
14 section 12106 of title 46, United States Code.

15 (2) EXCEPTIONS.—Crude oil subject to the pro-
16 hibition contained in paragraph (1) may be exported
17 only if—

18 (A) the President so recommends to the
19 Congress after making and publishing express
20 findings that exports of such crude oil, includ-
21 ing exchanges—

22 (i) will not diminish the total quantity
23 or quality of petroleum refined within,
24 stored within, or legally committed to be

1 transported to and sold within the United
2 States;

3 (ii) will, within 3 months following the
4 initiation of such exports or exchanges, re-
5 sult in—

6 (I) acquisition costs to the refin-
7 ers that purchase the imported crude
8 oil being lower than the acquisition
9 costs such refiners would have to pay
10 for the domestically produced oil in
11 the absence of such an export or ex-
12 change, and

13 (II) not less than 75 percent of
14 such savings in costs being reflected
15 in wholesale and retail prices of prod-
16 ucts refined from such imported crude
17 oil;

18 (iii) will be made only pursuant to
19 contracts which may be terminated if the
20 crude oil supplies of the United States are
21 interrupted, threatened, or diminished;

22 (iv) are clearly necessary to protect
23 the national interest; and

24 (v) are in accordance with the provi-
25 sions of this title; and

(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) EXPORTS UNDER BILATERAL AGREEMENTS.—Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such country before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) REFINED PETROLEUM PRODUCTS.—

(1) EXPORT LICENSES.—In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 103(4), the President shall notify the Congress of that determination. The President shall also notify

1 the Congress if and when he determines that such
2 export controls are no longer necessary. During any
3 period in which a determination that such export
4 controls are necessary is in effect, no refined petro-
5 leum product may be exported except pursuant to an
6 export license specifically authorizing such export.

7 (2) NOTIFICATION TO CONGRESS AND LAY-
8 OVER.—(A) Not later than 5 days after an applica-
9 tion for a license to export any refined petroleum
10 product is received, the Secretary shall notify the
11 Congress of such application, together with the
12 name of the exporter, the destination of the pro-
13 posed export, and the amount and price of the pro-
14 posed export. Such notification shall be made to the
15 chairman of the Committee on Foreign Affairs of
16 the House of Representatives and the chairman of
17 the Committee on Banking, Housing, and Urban Af-
18 fairs of the Senate.

19 (B) The Secretary may not grant such license
20 during the 30-day period beginning on the date on
21 which notification to the Congress under paragraph
22 (1) is received, unless the President certifies in writ-
23 ing to the Speaker of the House of Representatives
24 and the President pro tempore of the Senate that
25 the proposed export is vital to the national interest

1 and that a delay in issuing the license would ad-
2 versely affect that interest.

3 (3) EXCEPTION.—This subsection shall not
4 apply to—

5 (A) any export license application for ex-
6 ports to a country with respect to which histori-
7 cal export quotas established by the Secretary
8 on the basis of past trading relationships apply;
9 or

10 (B) any license application for exports to a
11 country if exports under the license would not
12 result in the export from the United States of
13 more than 250,000 barrels of refined petroleum
14 products to such country in any fiscal year.

15 (4) DEFINITION.—For purposes of this sub-
16 section, the term “refined petroleum product” means
17 gasoline, kerosene, distillates, propane or butane
18 gas, diesel fuel, and residual fuel oil, that is refined
19 within the United States or entered for consumption
20 within the United States.

21 (5) EXTENSION OF LICENSE APPLICATION
22 PROCESSING TIME.—The Secretary may extend any
23 time period prescribed in section 109 to the extent
24 necessary to take into account delays in action by

1 the Secretary on a license application on account of
2 the provisions of this subsection.

3 (f) CERTAIN PETROLEUM PRODUCTS.—Petroleum
4 products refined in United States foreign trade zones, or
5 in the United States Territory of Guam, from foreign
6 crude oil shall be excluded from any quantitative restric-
7 tions imposed under this section, except that, if the Sec-
8 retary finds that a product is in short supply, the Sec-
9 retary may issue such regulations as may be necessary to
10 limit exports.

11 (g) AGRICULTURAL COMMODITIES.—

12 (1) APPROVAL OF CONTROLS BY SECRETARY OF
13 AGRICULTURE.—The authority conferred by this sec-
14 tion shall not be exercised with respect to any agri-
15 cultural commodity, including fats and oils or animal
16 hides or skins, without the approval of the Secretary
17 of Agriculture. The Secretary of Agriculture shall
18 not approve the exercise of such authority with re-
19 spect to any such commodity during any period for
20 which the supply of such commodity is determined
21 by the Secretary of Agriculture to be in excess of the
22 requirements of the domestic economy, except to the
23 extent the President determines that the controls on
24 such agricultural commodities are also imposed
25 under section 106. The Secretary of Agriculture

1 shall, by exercising the authority which the Sec-
2 retary of Agriculture has under other applicable pro-
3 visions of law, collect data with respect to export
4 sales of animal hides and skins.

5 (2) PROTECTION OF STORED COMMODITIES
6 FROM FUTURE CONTROLS.—Upon approval of the
7 Secretary, in consultation with the Secretary of Ag-
8 riculture, agricultural commodities purchased by or
9 for use in a foreign country may remain in the Unit-
10 ed States for export at a later date free from any
11 quantitative limitations on export which may be im-
12 posed to carry out the policy set forth in section
13 103(4) subsequent to such approval. The Secretary
14 may not grant such approval unless the Secretary
15 receives adequate assurance and, in conjunction with
16 the Secretary of Agriculture, finds—

17 (A) that such commodities will eventually
18 be exported,

19 (B) that neither the sale nor export thereof
20 will result in an excessive drain of scarce mate-
21 rial and have a serious domestic inflationary
22 impact,

23 (C) that storage of such commodities in
24 the United States will not unduly limit the

1 space available for storage of domestically
2 owned commodities, and

3 (D) that the purpose of such storage is to
4 establish a reserve of such commodities for later
5 use, not including resale to or use by another
6 country.

7 The Secretary may issue such regulations as may be
8 necessary to carry out this paragraph.

9 (3) PROCEDURES FOR IMPOSING CONTROLS.—

10 (A) If the President imposes export controls on any
11 agricultural commodity under section 106 (including
12 section 106(i)) or this section, the President shall
13 immediately transmit a report on such action to the
14 Congress, setting forth the reasons for the controls
15 in detail and specifying the period of time, which
16 may not exceed 1 year, that the controls are pro-
17 posed to be in effect. If the Congress, within 60 days
18 after the date of the receipt of the report, adopts a
19 joint resolution pursuant to paragraph (4) approving
20 the imposition of the export controls, then such con-
21 trols shall remain in effect for the period specified
22 in the report, or until terminated by the President,
23 whichever occurs first. If the Congress, within 60
24 days after the date of its receipt of such report, fails
25 to adopt a joint resolution approving such controls,

1 then such controls shall cease to be effective upon
2 the expiration of that 60-day period.

3 (B) The provisions of subparagraph (A) and
4 paragraph (4) shall not apply to export controls—

5 (i) which are extended under this title if
6 the controls, when imposed, were approved by
7 the Congress under subparagraph (A) and
8 paragraph (4); or

9 (ii) which are imposed with respect to a
10 country as part of the prohibition or curtail-
11 ment of all exports to that country.

12 (4) EXPEDITED PROCEDURES.—(A) For pur-
13 poses of this paragraph, the term “joint resolution”
14 means only a joint resolution the matter after the
15 resolving clause of which is as follows: “That pursu-
16 ant to section 107(g)(3) of the Export Act of 1994,
17 the President may impose export controls as speci-
18 fied in the report submitted to the Congress on
19 _____.”, with the blank space being filled with the
20 appropriate date.

21 (B) On the day on which a report is submitted
22 to the House of Representatives and the Senate
23 under paragraph (3), a joint resolution with respect
24 to the export controls specified in such report shall
25 be introduced (by request) in the House by the

1 chairman of the Committee on Foreign Affairs, for
2 the chairman and the ranking minority member of
3 the Committee, or by Members of the House des-
4 ignated by the chairman and ranking minority mem-
5 ber; and shall be introduced (by request) in the Sen-
6 ate by the majority leader of the Senate, for the
7 chairman and the minority leader of the Senate, or
8 by Members of the Senate designated by the major-
9 ity leader and minority leader of the Senate. If ei-
10 ther House is not in session on the day on which
11 such a report is submitted, the joint resolution shall
12 be introduced in that House, as provided in the pre-
13 ceding sentence, on the first day thereafter on which
14 that House is in session.

15 (C) All joint resolutions introduced in the
16 House of Representatives shall be referred to the ap-
17 propriate committee and all joint resolutions intro-
18 duced in the Senate shall be referred to the Commit-
19 tee on Banking, Housing, and Urban Affairs.

20 (D) If the committee of either House to which
21 a joint resolution has been referred has not reported
22 the joint resolution at the end of 30 days after its
23 referral, the committee shall be discharged from fur-
24 ther consideration of the resolution or of any other

1 joint resolution introduced with respect to the same
2 matter.

3 (E) A joint resolution under this paragraph
4 shall be considered in the Senate in accordance with
5 the provisions of section 601(b)(4) of the Inter-
6 national Security Assistance and Arms Export Con-
7 trol Act of 1976. For the purpose of expediting the
8 consideration and passage of joint resolutions re-
9 ported or discharged pursuant to the provisions of
10 this paragraph, it shall be in order for the Commit-
11 tee on Rules of the House of Representatives to
12 present for consideration a resolution of the House
13 of Representatives providing procedures for the im-
14 mediate consideration of a joint resolution under
15 this paragraph which may be similar, if applicable,
16 to the procedure set forth in section 601(b)(4) of the
17 International Security Assistance and Arms Export
18 Control Act of 1976.

19 (F) In the case of a joint resolution described
20 in subparagraph (A), if, before the passage by one
21 House of a joint resolution of that House, that
22 House receives a resolution with respect to the same
23 matter from the other House, then—

1 (i) the procedure in that House shall be
 2 the same as if no joint resolution has been re-
 3 ceived from the other House; but

4 (ii) the vote on final passage shall be on
 5 the joint resolution of the other House.

6 (5) COMPUTATION OF TIME PERIODS.—In the
 7 computation of the period of 60 days referred to in
 8 paragraph (3) and the period of 30 days referred to
 9 in subparagraph (D) of paragraph (4), there shall be
 10 excluded the days on which either House of Con-
 11 gress is not in session because of an adjournment of
 12 more than 3 days to a day certain or because of an
 13 adjournment of the Congress sine die.

14 (h) BARTER AGREEMENTS.—

15 (1) EXEMPTION FROM CONTROLS.—The expor-
 16 tation pursuant to a barter agreement of any com-
 17 modities which may lawfully be exported from the
 18 United States, for any commodities which may law-
 19 fully be imported into the United States, may be ex-
 20 empted, in accordance with paragraph (2), from any
 21 quantitative limitation on exports (other than any
 22 reporting requirement) imposed to carry out the pol-
 23 icy set forth in section 103(4).

24 (2) CRITERIA FOR EXEMPTION.—The Secretary
 25 shall grant an exemption under paragraph (1) if the

1 Secretary finds, after consultation with the appro-
2 priate department or agency of the United States,
3 that—

4 (A) for the period during which the barter
5 agreement is to be performed—

6 (i) the average annual quantity of the
7 commodities to be exported pursuant to
8 the barter agreement will not be required
9 to satisfy the average amount of such com-
10 modities estimated to be required annually
11 by the domestic economy and will be sur-
12 plus thereto; and

13 (ii) the average annual quantity of the
14 commodities to be imported will be less
15 than the average amount of such commod-
16 ities estimated to be required annually to
17 supplement domestic production; and

18 (B) the parties to such barter agreement
19 have demonstrated adequately that they intend,
20 and have the capacity, to perform such barter
21 agreement.

22 (3) DEFINITION.—For purposes of this sub-
23 section, the term “barter agreement” means any
24 agreement which is made for the exchange, without
25 monetary consideration, of any commodities pro-

1 duced in the United States for any commodities pro-
2 duced outside of the United States.

3 (4) APPLICABILITY.—This subsection shall
4 apply only with respect to barter agreements entered
5 into after September 30, 1979.

6 (i) UNPROCESSED RED CEDAR.—

7 (1) PROHIBITION.—No unprocessed western red
8 cedar (*Thuja plicata*) logs harvested from State or
9 Federal lands may be exported from the United
10 States.

11 (2) RED CEDAR NOT AN AGRICULTURAL COM-
12 MODITY.—Unprocessed western red cedar logs shall
13 not be considered to be an agricultural commodity
14 for purposes of subsection (g).

15 (3) DEFINITION.—As used in this subsection,
16 the term “unprocessed western red cedar” means
17 red cedar timber which has not been processed
18 into—

19 (A) lumber of American Lumber Stand-
20 ards Grades of Number 3 dimension or better,
21 or Pacific Lumber Inspection Bureau Export
22 R-List Grades of Number 3 common or better;

23 (B) chips, pulp, and pulp products;

24 (C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—The export restrictions contained in subsection (i) and any export controls imposed under this section shall not affect—

(1) any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export; or

(2) any contract to harvest unprocessed red cedar which was entered into after September 30, 1979, and before October 1, 1982, and the performance of which would make the red cedar available for export, to the extent such exports were permitted under section 7(i) of the Export Administration Act of 1979.

Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For

1 purposes of this subsection, the term "contract to export"
2 includes, but is not limited to, an export sales agreement
3 and an agreement to invest in an enterprise which involves
4 the export of commodities or technology.

5 (k) OIL EXPORTS FOR USE BY UNITED STATES
6 MILITARY FACILITIES.—For purposes of subsection (d),
7 and for purposes of any export controls imposed under
8 this title, shipments of crude oil, refined petroleum prod-
9 ucts, or partially refined petroleum products from the
10 United States for use by the Department of Defense or
11 United States-supported installations or facilities shall not
12 be considered to be exports.

13 SEC. 108. FOREIGN BOYCOTTS.

14 (a) PROHIBITIONS AND EXCEPTIONS.—

15 (1) PROHIBITIONS.—In order to carry out the
16 policies set forth in section 103(10), the President
17 shall issue regulations prohibiting any United States
18 person, with respect to that person's activities in the
19 interstate or foreign commerce of the United States,
20 from taking or knowingly agreeing to take any of
21 the following actions with intent to comply with, fur-
22 ther, or support any boycott fostered or imposed by
23 a foreign country against a country which is friendly
24 to the United States and which is not itself the ob-

1 ject of any form of boycott pursuant to United
2 States law or regulation:

3 (A) Refusing, or requiring any other per-
4 son to refuse, to do business with or in the boy-
5 cotted country, with any business concern orga-
6 nized under the laws of the boycotted country,
7 with any national or resident of the boycotted
8 country, or with any other person, pursuant to
9 an agreement with, a requirement of, or a re-
10 quest from or on behalf of the boycotting coun-
11 try. The mere absence of a business relationship
12 with or in the boycotted country with any busi-
13 ness concern organized under the laws of the
14 boycotted country, with any national or resident
15 of the boycotted country, or with any other per-
16 son, does not indicate the existence of the in-
17 tent required to establish a violation of regula-
18 tions issued to carry out this subparagraph.

19 (B) Refusing, or requiring any other per-
20 son to refuse, to employ or otherwise discrimi-
21 nating against any United States person on the
22 basis of race, religion, sex, or national origin of
23 that person or of any owner, officer, director, or
24 employee of such person.

1 (C) Furnishing information with respect to
2 the race, religion, sex, or national origin of any
3 United States person or of any owner, officer,
4 director, or employee of such person.

5 (D) Furnishing information about whether
6 any person has, has had, or proposes to have
7 any business relationship (including a relation-
8 ship by way of sale, purchase, legal or commer-
9 cial representation, shipping or other transport,
10 insurance, investment, or supply) with or in the
11 boycotted country, with any business concern
12 organized under the laws of the boycotted coun-
13 try, with any national or resident of the boy-
14 cotted country, or with any other person that is
15 known or believed to be restricted from having
16 any business relationship with or in the boy-
17 cotted country. Nothing in this paragraph shall
18 prohibit the furnishing of normal business in-
19 formation in a commercial context as defined by
20 the Secretary.

21 (E) Furnishing information about whether
22 any person is a member of, has made a con-
23 tribution to, or is otherwise associated with or
24 involved in the activities of any charitable or

1 fraternal organization which supports the boy-
2 cotted country.

3 (F) Paying, honoring, confirming, or other-
4 wise implementing a letter of credit which con-
5 tains any condition or requirement compliance
6 with which is prohibited by regulations issued
7 pursuant to this paragraph, and no United
8 States person shall, as a result of the applica-
9 tion of this paragraph, be obligated to pay or
10 otherwise honor or implement such letter of
11 credit.

12 (2) EXCEPTIONS.—Regulations issued pursuant
13 to paragraph (1) shall provide exceptions for—

14 (A) complying or agreeing to comply with
15 requirements—

16 (i) prohibiting the import of commod-
17 ities or services from the boycotted country
18 or commodities produced or services pro-
19 vided by any business concern organized
20 under the laws of the boycotted country or
21 by nationals or residents of the boycotted
22 country; or

23 (ii) prohibiting the shipment of com-
24 modities to the boycotted country on a car-
25 rier of the boycotted country, or by a route

1 other than that prescribed by the boycott-
2 ing country or the recipient of the ship-
3 ment:

4 (B) complying or agreement to comply
5 with import and shipping document require-
6 ments with respect to the country of origin, the
7 name of the carrier and route of shipment, the
8 name of the supplier of the shipment, or the
9 name of the provider of other services, except
10 that no information knowingly furnished or con-
11 veyed in response to such requirements may be
12 stated in negative, blacklisting, or similar exclu-
13 sionary terms, other than with respect to car-
14 riers or route of shipment as may be permitted
15 by such regulations in order to comply with pre-
16 cautionary requirements protecting against war
17 risks and confiscation;

18 (C) complying or agreeing to comply in the
19 normal course of business with the unilateral
20 and specific selection by a boycotting country,
21 or national or resident thereof, of carriers, in-
22 surers, suppliers of services to be performed
23 within the boycotting country, or specific com-
24 modities which, in the normal course of busi-

1 ness, are identifiable by source when imported
2 into the boycotting country;

3 (D) complying or agreeing to comply with
4 export requirements of the boycotting country
5 relating to shipments or transshipment of ex-
6 ports to the boycotted country, to any business
7 concern of or organized under the laws of the
8 boycotted country, or to any national or resi-
9 dent of the boycotted country;

10 (E) compliance by an individual or agree-
11 ment by an individual to comply with the immi-
12 gration or passport requirements of any country
13 with respect to such individual or any member
14 of such individual's family or with requests for
15 information regarding requirements of employ-
16 ment of such individual within the boycotting
17 country; and

18 (F) compliance by a United States person
19 resident in a foreign country or agreement by
20 such person to comply with the laws of the
21 country with respect to such person's activities
22 exclusively therein, and such regulations may
23 contain exceptions for such resident complying
24 with the laws or regulations of the foreign coun-
25 try governing imports into such country of

1 trademarked, trade named, or similarly speci-
2 cally identifiable products, or components of
3 products for such person's own use, including
4 the performance of contractual services within
5 that country, as may be defined by such regula-
6 tions.

7 (3) LIMITATION ON EXCEPTIONS.—Regulations
8 issued pursuant to paragraphs (2)(C) and (2)(F)
9 shall not provide exceptions from paragraphs (1)(B)
10 and (1)(C).

11 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT
12 AFFECTED.—Nothing in the subsection may be con-
13 strued to supersede or limit the operation of the
14 antitrust or civil rights laws of the United States.

15 (5) EVASION.—This section shall apply to any
16 transaction or activity undertaken, by or through a
17 United States person or any other person, with intent
18 to evade the provisions of this section as imple-
19 mented by the regulations issued pursuant to this
20 subsection, and such regulations shall expressly pro-
21 vide that the exceptions set forth in paragraph (2)
22 shall not permit activities or agreements (expressed
23 or implied by a course of conduct, including a pat-
24 tern of responses) otherwise prohibited, which are
25 not within the intent of such exceptions.

1 (b) EMERGENCY CONTROLS.—

2 (1) REGULATIONS.—In addition to the regula-
3 tions issued pursuant to subsection (a), regulations
4 issued under section 106 shall implement the policies
5 set forth in section 103(10).

6 (2) REPORTS BY UNITED STATES PERSONS.—

7 Such regulations shall require that any United States
8 person receiving a request for the furnishing of in-
9 formation, the entering into or implementing of
10 agreements, or the taking of any other action re-
11 ferred to in section 103(10) shall report that fact to
12 the Secretary, together with such other information
13 concerning such request as the Secretary may re-
14 quire for such action as the Secretary considers ap-
15 propriate for carrying out the policies of that sec-
16 tion. Such person shall also report to the Secretary
17 whether such person intends to comply and whether
18 such person has complied with such request. Any re-
19 port filed pursuant to this paragraph shall be made
20 available promptly for public inspection and copying,
21 except that information regarding the quantity, de-
22 scription, and value of any commodities or tech-
23 nology to which such report relates may be kept con-
24 fidential if the Secretary determines that disclosure
25 thereof would place the United States person in-

1 volved at a competitive disadvantage. The Secretary
 2 shall periodically transmit summaries of the infor-
 3 mation contained in such reports to the Secretary of
 4 State for such action as the Secretary of State, in
 5 consultation with the Secretary, considers appro-
 6 priate for carrying out the policies set forth in sec-
 7 tion 103(10).

8 (c) PREEMPTION.—The provisions of this section and
 9 the regulations issued under this section shall preempt any
 10 law, rule, or regulation which—

11 (1) is a law, rule, or regulation of any of the
 12 several States or the District of Columbia, or any of
 13 the territories or possessions of the United States,
 14 or of any governmental subdivision thereof; and

15 (2) pertains to participation in, compliance
 16 with, implementation of, or the furnishing of infor-
 17 mation regarding restrictive trade practices or boy-
 18 cotts fostered or imposed by foreign countries
 19 against other countries.

20 SEC. 109. PROCEDURES FOR PROCESSING EXPORT LI-
 21 CENSE APPLICATIONS; OTHER INQUIRIES.

22 (a) PRIMARY RESPONSIBILITY OF THE SEC-
 23 RETARY.—

24 (1) IN GENERAL.—All export license applica-
 25 tions required under this title shall be submitted by

1 the applicant to the Secretary. All determinations
2 with respect to any such application shall be made
3 by the Secretary, subject to the procedures provided
4 in this section.

5 (2) DETERMINATIONS WITHOUT REFERRALS.—

6 It is the intent of the Congress that a determination
7 with respect to any export license application be
8 made to the maximum extent possible by the Sec-
9 retary without referral of such application to any
10 other department or agency of the Government.

11 (3) REGULATIONS.—In regulations that carry

12 out this section, the Secretary shall describe the pro-
13 cedures required by this section, the responsibilities
14 of the Secretary and of other departments and agen-
15 cies in reviewing applications, the rights of the appli-
16 cant, and the extent of any multilateral review of a
17 given license application.

18 (4) CALCULATION OF TIME PERIODS.—In cal-

19 culating the processing times set forth in this sec-
20 tion, the Secretary shall use calendar days, except
21 that if the final day for a required action falls on a
22 weekend or holiday, that action shall be taken no
23 later than the following business day.

24 (5) CONSIDERATION OF RELIABILITY OF PAR-

25 TIES.—In reviewing applications for validated export

licenses, the Secretary may in each case consider the reliability of the parties to the proposed export. In making such an evaluation, the Secretary may consider all sources of information, including intelligence information. The consideration of intelligence information in connection with the evaluation of the reliability of parties shall not authorize the direct or indirect disclosure of classified information or sources and methods of gathering classified information.

(b) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—

(1) REFERRALS.—(A) At the direction of the President, the Secretary shall refer appropriate license applications required under section 105 or 106 to appropriate departments and agencies of the Government to make recommendations and provide information to the Secretary on such applications.

(B) The President shall restrict referrals of license applications to Government departments and agencies that possess particular expertise and information that is relevant to the licensing process and is not possessed by the Secretary.

(C) To assist the Secretary in export licensing determinations, the Director of Central Intelligence

1 shall collect all intelligence information regarding
2 controlled end users and shall have such information
3 accessible in computerized form at the Central Intel-
4 ligence Agency no later than December 31, 1994.
5 Each department or agency of the Government in
6 possession of intelligence information regarding con-
7 trolled end users shall provide that information to
8 the Central Intelligence Agency not later than Sep-
9 tember 30, 1994.

10 (2) ORGANIZATION OF REVIEWING AGENCIES.—

11 Departments and agencies reviewing license applica-
12 tions shall organize their resources and units to plan
13 for the prompt and expeditious internal dissemina-
14 tion of export license applications, if necessary, so as
15 to avoid delays in responding to the Secretary's re-
16 quest for information and recommendations.

17 (3) REQUESTS FOR ADDITIONAL INFORMA-
18 TION.—Within 5 days after an export license appli-
19 cation is referred to a department or agency under
20 this subsection, the agency or department shall
21 specify to the Secretary all information that is not
22 in the application that would be required to respond
23 to the referral of the application, and the Secretary
24 shall, pursuant to subsection (d)(1)(C), request such
25 information from the applicant. The time that may

1 elapse between the date the information is requested
2 from the applicant and the date the information is
3 received by the Secretary shall not be included in
4 calculating the time periods prescribed in this sec-
5 tion.

6 (c) ACTION BY THE SECRETARY.—Subject to sub-
7 section (d)(4), 30 days after the date of formal filing with
8 the Secretary of an export license application, a license
9 for the transaction specified in the application shall be-
10 come valid and effective and the commodities or tech-
11 nology involved are authorized for export or reexport pur-
12 suant to such license, unless—

13 (1) the application has been otherwise approved
14 by the Secretary, in which case it shall be valid and
15 effective according to the terms of the approval; or

16 (2) the application has been denied by the Sec-
17 retary under this section and the applicant has been
18 so informed.

19 (d) PROCEDURES FOR PROCESSING EXPORT LI-
20 CENSE APPLICATIONS.—

21 (1) INITIAL SCREENING.—Not more than 10
22 days after the date on which any export license ap-
23 plication is submitted to the Secretary, the Secretary
24 shall—

1 (A) send the applicant an acknowledgment
2 of the receipt of the application and the date of
3 the receipt:

4 (B) submit to the applicant a written de-
5 scription of the procedures required by this sec-
6 tion, the responsibilities of the Secretary with
7 respect to the application, and the rights of the
8 applicant:

9 (C) on the basis of information the Sec-
10 retary has, including information provided to
11 the Secretary under subsection (b)(3), return
12 the application without action if the application
13 is improperly completed or if additional infor-
14 mation is required, with sufficient information
15 to permit the application to be properly resub-
16 mitted; and

17 (D) determine whether it is necessary to
18 submit the application to a multilateral review
19 process pursuant to an export control regime
20 and, if so, inform the applicant of such require-
21 ment.

22 (2) REFERRAL.—(A) If, pursuant to criteria es-
23 tablished by the President, the Secretary is to refer
24 an export license application to any other depart-
25 ment or agency for a recommendation under sub-

1 section (b)(1), the Secretary shall, within 2 days
2 after receiving the application, refer the application
3 concurrently to all such departments or agencies,
4 transmitting the application electronically whenever
5 possible. A department or agency reviewing an ex-
6 port license application referred by the Secretary
7 shall have 10 days in which to submit to the Sec-
8 retary its recommendations on the application. Any
9 department or agency which does not submit its rec-
10 ommendations within that 10-day period shall be
11 deemed by the Secretary to have no objection to the
12 approval of such application.

13 (B) A recommendation that the Secretary deny
14 a validated license shall include a statement of rea-
15 sons for the recommendation that are consistent
16 with the provisions of this title, and shall cite both
17 the statutory and the regulatory basis for the rec-
18 ommendation.

19 (3) INTERAGENCY COMMITTEE.—An inter-
20 agency committee may be established by the Presi-
21 dent for the purpose of resolving disputes among de-
22 partments and agencies on export license applica-
23 tions under this title. Such committee shall be
24 chaired by the Secretary. The procedures followed by
25 such interagency committee shall provide—

1 (A) deadlines for decisions within the
2 interagency committee consistent with the duty
3 of the Secretary to reach his or her final deci-
4 sion on an application within 30 days after the
5 date of filing of the license application;

6 (B) that a department or agency dissent-
7 ing from the position of the Secretary shall
8 have the burden to bring the issue in writing to
9 the next level of review provided within the
10 interagency committee and may only dissent on
11 the basis of the criteria set forth in section
12 105(c)(1)(D) or section 106(a)(4); and

13 (C) that a department or agency that fails
14 to make a timely escalation of a disputed mat-
15 ter shall be deemed to have no objection to the
16 decision of the Secretary.

17 (4) ACTIONS BY THE SECRETARY.—(A) When a
18 referral of a license application to other departments
19 or agencies is not required, the Secretary shall issue
20 a license or notify the applicant of the intent to deny
21 within 10 days after receiving the application.

22 (B) If an application is to be denied because
23 the export would be made to a controlled end user,
24 no referral to other departments or agencies is re-

quired, and the applicant shall be informed of the reason for the denial.

(5) ACTION UPON DENIAL.—In cases in which the Secretary has determined that a license application should be denied, the applicant shall be informed in writing, not later than 3 days after such determination is made, of—

(A) the determination;

(B) the statutory and regulatory basis for the proposed denial;

(C) the reasons for such denial, with references to the criteria set forth in section 105 or 106 (as the case may be);

(D) what, if any, modifications in, or restrictions on, the commodities or technology for which the license was sought would allow the export or reexport of the commodities or technology to be compatible with controls imposed under this title;

(E) which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate;

(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application; and
(G) the availability of appeal procedures.

The Secretary shall allow the applicant not less than 30 days to respond to the Secretary's determination before the license application is finally denied.

(e) RECORDKEEPING.—The Secretary shall make and keep records of all advice and recommendations given by Federal departments and agencies, and decisions made by the Department of Commerce, in connection with any export license application or revision of an export license application under this title, including the factual and analytical basis of the advice, recommendations, or decisions.

(f) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (d), in any case in which, after an export license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

(g) APPEAL AND COURT ACTIONS.—

1 (1) IN GENERAL.—The Secretary shall establish
2 appropriate procedures for any applicant to appeal
3 to the Secretary the denial of an export license ap-
4 plication under this title.

5 (2) PUBLICATION AND INDEXING OF APPEAL
6 DECISIONS.—The Secretary shall, to the greatest ex-
7 tent practicable, taking into account restrictions on
8 the disclosure of classified or confidential informa-
9 tion, publish in the Federal Register and index deci-
10 sions on appeals of license denials under paragraph
11 (1).

12 (3) FINAL ORDERS; APPEAL.—The determina-
13 tion of the Secretary on appeals under this sub-
14 section shall be final and may be appealed in accord-
15 ance with section 112(a)(2).

16 (h) OTHER INQUIRIES.—

17 (1) CLASSIFICATION REQUESTS.—In any case
18 in which the Secretary receives a written request
19 asking for the proper classification of a commodity
20 or technology on the control index, the Secretary
21 shall, not more than 10 working days after receiving
22 the request, inform the person making the request
23 of the proper classification.

24 (2) APPLICABILITY OF REQUIREMENT.—In any
25 case in which the Secretary receives a written re-

1 quest for information about the applicability of ex-
2 port license requirements under this title to a pro-
3 posed transaction or series of transactions, the Sec-
4 retary shall, not more than 30 days after receiving
5 the request, reply with that information to the per-
6 son making the request.

7 (3) PUBLICATION OF CLASSIFICATION DETER-
8 MINATIONS.—The Secretary shall, to the greatest ex-
9 tent practicable, taking into account restrictions on
10 the disclosure of classified or confidential informa-
11 tion, publish in the Federal Register classification
12 determinations made under paragraph (1).

13 (i) REPORTS ON LICENSE APPLICATIONS.—

14 (1) QUARTERLY REPORT.—Not later than 180
15 days after the date of the enactment of this Act, and
16 not later than the end of each 3-month period there-
17 after, the Secretary shall submit to the Committee
18 on Foreign Affairs of the House of Representatives
19 and to the Committee on Banking, Housing, and
20 Urban Affairs of the Senate a report listing all ap-
21 plications on which action was completed during the
22 preceding 3-month period and which required a pe-
23 riod longer than the period permitted under sub-
24 section (c) or (d)(4), as the case may be, before noti-

1 fication on a decision to approve or deny the applica-
2 tion was sent to the applicant.

3 (2) INFORMATION ON LICENSE APPLICA-
4 TIONS.—With regard to each application, each list-
5 ing shall identify—

6 (A) the application case number;

7 (B) the value of the commodities or tech-
8 nology to which the application relates;

9 (C) the country of destination of the com-
10 modities or technology;

11 (D) the date on which the application was
12 received by the Secretary;

13 (E) the date on which the Secretary ap-
14 proved or denied the application; and

15 (F) the date on which the notification of
16 approval or denial of the application was sent to
17 the applicant.

18 (3) INTRODUCTION TO REPORT.—With respect
19 to an application referred to any other department
20 or agency which did not submit or has not submitted
21 its recommendations on the application within the
22 period permitted under subsection (d)(2) to submit
23 such recommendations, the listing shall also
24 include—

(A) the office responsible for processing the application and the officer responsible for the office; and

(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

SEC. 110. VIOLATIONS.

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Except as provided in paragraph (3), any individual who knowingly violates or conspires to or attempts to violate any provision of this title or any regulation, license, or order issued under this title shall be fined not more than 5 times the value of the exports involved or \$500,000, whichever is greater, or imprisoned not more than 10 years, or both.

(2) VIOLATIONS BY A PERSON OTHER THAN AN INDIVIDUAL.—Except as provided in paragraph (3), any person other than an individual who knowingly violates or conspires to or attempts to violate any provision of this title or any regulation, license, or order issued under this title shall be fined not more than 10 times the value of the exports involved or \$1,000,000, whichever is greater.

(3) ANTIBOYCOTT VIOLATIONS.—Any person who knowingly violates or conspires to or attempts to violate any regulation or order issued under section 108 shall—

(A) in the case of an individual, be fined not more than \$100,000, or imprisoned not more than 10 years, or both; and

(B) in any other case, be fined not more than \$100,000.

(b) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

(1) FORFEITURE.—Any person who is convicted under subsection (a)(1) or (2) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the commodities or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) PROCEDURES.—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—

(1) CIVIL PENALTIES.—The Secretary may impose a civil penalty of not more than \$250,000 for each violation of this title or any regulation, license, or order issued under this title, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation of regulations issued under section 108 may not exceed \$10,000.

(2) DENIAL OF EXPORT PRIVILEGES.—The Secretary may deny the export privileges of any person, including suspending or revoking the authority of

1 any person to export or receive United States-origin
2 commodities or technology, for any violation of this
3 title or any regulation, license, or order issued under
4 this title.

5 (d) PAYMENT OF CIVIL PENALTIES.—The payment
6 of any civil penalty imposed under subsection (c) may be
7 made a condition, for a period not exceeding 1 year after
8 the penalty has become due but has not been paid, to the
9 granting, restoration, or continuing validity of any export
10 license, permission, or privilege granted or to be granted
11 to the person upon whom such penalty is imposed. In addi-
12 tion, the payment of any civil penalty imposed under sub-
13 section (c) may be deferred or suspended in whole or in
14 part for a period of time no longer than any probation
15 period (which may exceed 1 year) that may be imposed
16 upon such person. Such deferral or suspension shall not
17 operate as a bar to the collection of the penalty in the
18 event that the conditions of the suspension, deferral, or
19 probation are not fulfilled.

20 (e) REFUNDS.—Any amount paid in satisfaction of
21 any amounts realized from the forfeiture of any property
22 interest or proceeds under subsection (b) or any civil pen-
23 alty imposed under subsection (c) shall be covered into the
24 Treasury as a miscellaneous receipt. The head of the de-
25 partment or agency concerned may, in his or her discre-

tion, refund any such civil penalty imposed under subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) EFFECT OF OTHER CONVICTIONS.—

(1) DENIAL OF EXPORT PRIVILEGES.—Any person convicted of a violation of—

(A) this title or the Export Administration Act of 1979 (or any regulation, license, or order issued under this title or that Act),

(B) any regulation, license, or order issued under the International Emergency Economic Powers Act,

(C) section 793, 794, or 798 of title 18, United States Code,

(D) section 371 or 1001 of title 18, United States Code, if in connection with the export of commodities or technology controlled under this title, or defense articles or defense services controlled under the Arms Export Control Act,

(E) section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or

1 (F) section 38 of the Arms Export Control
2 Act,

3 may, at the discretion of the Secretary, be denied ex-
4 port privileges under this title for a period of up to
5 10 years from the date of the conviction. The Sec-
6 retary may also revoke any export license under this
7 title in which such person had an interest at the
8 time of the conviction.

9 (2) RELATED PERSONS.—The Secretary may
10 exercise the authority under paragraph (1) with re-
11 spect to any person related, through affiliation, own-
12 ership, control, or position of responsibility, to any
13 person convicted of any violation of a law set forth
14 in paragraph (1), upon a showing of such relation-
15 ship with the convicted person, after providing notice
16 and opportunity for a hearing.

17 (g) STATUTE OF LIMITATIONS.—Any case in which
18 a civil penalty or other administrative sanction (other than
19 a temporary denial order) is sought under subsection (c)
20 may not be instituted more than 5 years after the date
21 of the alleged violation, except that, in any case in which
22 a criminal indictment alleging a violation of this title is
23 returned within the time limits prescribed by law for the
24 institution of such action, the statute of limitations for
25 bringing a proceeding to impose a civil penalty or other

1 administrative proceeding under this title shall, upon the
2 return of the criminal indictment, be tolled against all per-
3 sons named as a defendant. The tolling of the statute of
4 limitations shall continue for a period of 6 months from
5 the date a conviction is entered or the indictment is dis-
6 missed.

7 (h) VIOLATIONS DEFINED BY REGULATION.—Noth-
8 ing in this section shall limit the power of the Secretary
9 to define by regulation violations under this title.

10 (i) OTHER AUTHORITIES.—Nothing in subsection
11 (c), (d), (f), or (g) limits—

12 (1) the availability of other administrative or
13 judicial remedies with respect to violations of this
14 title, or any regulation, order, or license issued
15 under this title;

16 (2) the authority to compromise and settle ad-
17 ministrative proceedings brought with respect to any
18 such violation; or

19 (3) the authority to compromise, remit, or miti-
20 gate seizures and forfeitures pursuant to section
21 1(b) of title VI of the Act of June 15, 1917, (22
22 U.S.C. 401(b)).

1 SEC. 111. SANCTIONS FOR PROLIFERATION ACTIVITY AND
2 THE USE OF WEAPONS OF MASS DESTRU-
3 TION.

4 (a) SANCTIONS FOR ACTIVITIES SUPPORTING THE
5 PROLIFERATION OF WEAPONS OF MASS DESTRUCTION
6 AND MISSILES.—

7 (1) VIOLATIONS BY UNITED STATES PER-
8 SONS.—(A) If the President determines that a Unit-
9 ed States person, on or after the date of the enact-
10 ment of this Act, with requisite knowledge—

11 (i) exports or transfers—

12 (I) any item on the MTCR Annex,

13 (II) any chemicals, biological agents,
14 or equipment placed on the list of the Aus-
15 tralia Group to be restricted for export by
16 members of the Australia Group, or

17 (III) any items placed on the list of
18 the Nuclear Suppliers Group to be re-
19 stricted for export by members of the Nu-
20 clear Suppliers Group,

21 in violation of United States law;

22 (ii) conspires to or attempts to engage in
23 such export, transfer, or trade; or

24 (iii) facilitates such export, transfer, or
25 trade by any other person;

1 then the President shall impose, for a period of 2
2 years, the sanctions described in subparagraph (B)
3 on the entities described in paragraph (3).

4 (B) The sanctions referred to in subparagraph
5 (A) are the following:

6 (i) The President shall deny to the sanc-
7 tioned entity, for a period of 2 years, licenses
8 to export any items controlled under section
9 105.

10 (ii) The United States Government shall
11 not procure, or enter into any contract for the
12 procurement of, any services, commodities,
13 technology, or other products from or produced
14 by the sanctioned entity.

15 (2) VIOLATIONS BY FOREIGN PERSONS.—(A) If
16 the President determines that a foreign person, on
17 or after the date of the enactment of this Act, mate-
18 rially and with requisite knowledge contributed to
19 the efforts of any non-regime country—

20 (i) to use, design, develop, produce, stock-
21 pile, or otherwise acquire weapons of mass de-
22 struction or missiles through the export or
23 transfer of—

24 (I) any item on the MTCR Annex,
25 whether or not of United States-origin:

1 (II) any chemicals, biological agents,
2 or equipment placed on the list of the Aus-
3 tralia Group to be restricted for export by
4 members of the Australia Group; or

5 (III) any items placed on the list of
6 the Nuclear Suppliers Group to be re-
7 stricted for export by members of the Nu-
8 clear Suppliers Group;

9 (ii) to acquire unsafeguarded special nu-
10 clear material through the export or transfer—

11 (I) of any goods or technology de-
12 scribed in subparagraph (C); or

13 (II) from a foreign country of any
14 items that would be, if exported from the
15 United States, goods or technology de-
16 scribed in subparagraph (C); or

17 (iii) to carry out any activity described in
18 clause (i) or (ii)—

19 (I) through the provision of services,
20 including skilled labor;

21 (II) by participating in any financial
22 transaction related to any export or trans-
23 fer described in clause (i) or (ii) or any ac-
24 tivity described in subclause (I); or

(III) by facilitating any export or transfer described in clause (i) or (ii) or any activity described in subclause (I) or (II);

then the President shall impose, for a period of 2 years, the sanctions described in subparagraph (B) on the entities described in paragraph (3).

(B) The sanctions referred to in subparagraph (A) are the following:

(i) The authorities of this title shall be used to prohibit the export to the sanctioned entity of any items controlled under section 105.

(ii) There shall be a prohibition on the import of all goods that are the growth, product, or manufacture of the sanctioned entity.

(iii) The United States Government shall not procure, or enter into any contract for the procurement of, any services, commodities, or technology, or other products from or produced by the sanctioned entity.

(C) For purposes of subparagraph (A)(ii), the term "goods or technology" means nuclear materials and equipment and sensitive nuclear technology (as such terms are defined in section 4 of the Nuclear

1 Non-Proliferation Act of 1978), all export items des-
2 ignated by the President pursuant to section 309(c)
3 of the Nuclear Non-Proliferation Act of 1978, and
4 all technical assistance requiring authorization under
5 section 57b. of the Atomic Energy Act of 1954.

6 (3) ENTITIES AGAINST WHICH SANCTIONS ARE
7 IMPOSED.—The President shall impose sanctions
8 under paragraphs (1) and (2) on—

9 (A) the person that committed the conduct
10 that is the subject of the determination giving
11 rise to the sanctions;

12 (B) any successor of a person or entity de-
13 scribed in clause (i);

14 (C) any foreign person or United States
15 person that is a parent or subsidiary of a per-
16 son or entity described in clause (i) if that par-
17 ent or subsidiary materially and with requisite
18 knowledge assisted in the activities which are
19 the basis of that determination; and

20 (D) any foreign person or United States
21 person that is an affiliate of a person or entity
22 described in clause (i) if that affiliate materially
23 and with requisite knowledge assisted in the ac-
24 tivities which were the basis of that determina-

tion and if that affiliate is controlled in fact by that person or entity.

For purposes of this section, any person or entity described in subparagraph (A), (B), (C), or (D) shall be referred to as a "sanctioned entity".

(4) EXEMPTION OF CERTAIN EXPORTS FROM SANCTIONS.—The requirement in paragraph (1)(B)(i) and (2)(B)(i) that licenses to export items controlled under section 105 be denied shall not apply to items which require individual validated licenses solely by virtue of the imposition of controls under the Enhanced Proliferation Control Initiative regulations set forth in section 778.7(c) of title 15, Code of Federal Regulations.

(5) EXEMPTION FOR REGIME ADHERENTS.—

(A) EXEMPTION.—Paragraphs (1) and (2) do not authorize a determination that would result in the imposition of sanctions for an export, reexport, or transfer—

(i) from a country that is an adherent of a multilateral regime controlling such export, reexport, or transfer—

(I) if the export, reexport, or transfer is properly authorized by the government of such country; and

1 (II) such authorization is not ob-
 2 tained by misrepresentation or fraud;
 3 or

4 (ii) to an end user in a country that
 5 is an adherent of a multilateral regime
 6 controlling such export, reexport, or trans-
 7 fer.

8 (B) DEFINITION.—For purposes of para-
 9 graph (1), a country is an “adherent” of a mul-
 10 tilateral regime if that country is a member of
 11 that regime or a cooperating country with re-
 12 spect to that regime.

13 (6) CONSULTATION WITH AND ACTIONS BY
 14 FOREIGN GOVERNMENT OF JURISDICTION.—

15 (A) CONSULTATIONS.—If the President
 16 makes a determination described in subsection
 17 (a)(2) with respect to a foreign person, the
 18 Congress urges the President to initiate con-
 19 sultations immediately with the government
 20 with primary jurisdiction over that foreign per-
 21 son with respect to the imposition of sanctions
 22 pursuant to this section.

23 (B) ACTIONS BY GOVERNMENT OF JURIS-
 24 DICTION.—In order to pursue such consulta-
 25 tions with that government, the President may

1 delay imposition of sanctions pursuant to this
2 subsection for up to 90 days. Following these
3 consultations, the President shall impose sanc-
4 tions unless the President determines and cer-
5 tifies to the Congress that that government has
6 taken specific and effective actions, including
7 appropriate penalties, to terminate the involve-
8 ment of the foreign person in the activities de-
9 scribed in subsection (a)(2). The President may
10 delay the imposition of sanctions for up to an
11 additional 90 days if the President determines
12 and certifies to the Congress that that govern-
13 ment is in the process of taking the actions de-
14 scribed in the preceding sentence.

15 (C) REPORT TO CONGRESS.—Not later
16 than 90 days after making a determination
17 under subsection (a)(2), the President shall
18 submit to the Committee on Foreign Relations
19 and the Committee on Governmental Affairs of
20 the Senate and the Committee on Foreign Af-
21 fairs of the House of Representatives a report
22 on the status of consultations with the appro-
23 priate government under this paragraph, and
24 the basis for any determination under subpara-

1 graph (B) that such government has taken spe-
2 cific and effective actions.

3 (7) EFFECT OF ENFORCEMENT ACTIONS BY RE-
4 GIME ADHERENTS.—

5 (A) EXEMPTION FROM SANCTIONS.—Sanc-
6 tions set forth in paragraph (1) or (2) may not
7 be imposed under this subsection on a person
8 with respect to acts described in either such
9 paragraph or, if such sanctions are in effect
10 against a person on account of such acts, such
11 sanctions shall be terminated, if the government
12 of a regime adherent is taking judicial or other
13 enforcement action against that person with re-
14 spect to such acts, or that person has been
15 found by the government of a regime adherent
16 to be innocent of wrongdoing with respect to
17 such acts.

18 (B) REGIME ADHERENT DEFINED.—For
19 purposes of subparagraph (A), a “regime ad-
20 herent” is a country that is a member of a mul-
21 tilateral regime that controls the export, reex-
22 port, or transfer giving rise to the sanctions, or
23 is a cooperating country with respect to such
24 regime.

(8) REQUISITE KNOWLEDGE DEFINED.—For purposes of this subsection, the term “requisite knowledge” means situations in which a person “knows”, as “knowing” is defined in section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2).

(b) SANCTIONS AGAINST COUNTRIES FOR USE OF WEAPONS OF MASS DESTRUCTION.—

(1) DETERMINATION.—Whenever persuasive information becomes available to the executive branch indicating the substantial possibility that, on or after the date of the enactment of this Act, the government of a foreign country has made substantial preparation to use or has used weapons of mass destruction in violation of international law or has used lethal weapons of mass destruction against its own nationals, the President shall, within 60 days after the receipt of such information by the executive branch, determine whether that government, on or after such date of enactment, has used a weapon of mass destruction in violation of international law, or has used lethal weapons of mass destruction against its own nationals.

(2) DETERMINATION TO BE REPORTED TO CONGRESS.—Upon making a determination under para-

graph (1), the President shall promptly report that determination to the Congress. If the determination is that a foreign government had used such weapons as described in that paragraph, the report shall specify the sanctions to be imposed pursuant to paragraph (4).

(3) CONGRESSIONAL REQUESTS; REPORT.—

(A) REQUEST.—The Chairman of the Committee on Foreign Relations of the Senate (upon consultation with the ranking minority member of such committee) or the Chairman of the Committee on Foreign Affairs of the House of Representatives (upon consultation with the ranking minority member of such committee) may at any time request the President to consider whether a particular foreign government, on or after the date of the enactment of this Act, has used weapons of mass destruction in violation of international law or has used lethal weapons of mass destruction against its own nationals.

(B) REPORT TO CONGRESS.—Not later than 60 days after receiving such a request, the President shall provide to the Chairman of the Committee on Foreign Relations of the Senate

and the Chairman of the Committee on Foreign affairs of the House of Representatives a written report on the information held by the executive branch which is pertinent to the issue of whether the specified government, on or after the date of the enactment of this Act, has used weapons of mass destruction in violation of international law or has used lethal weapons of mass destruction against its own nationals.

(4) MANDATORY SANCTIONS FOR USE OF WEAPONS OF MASS DESTRUCTION.—The following sanctions shall be imposed for a minimum of 2 years in the event the President makes an affirmative determination under paragraph (1) with respect to the government of a foreign country:

(A) FOREIGN ASSISTANCE.—The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance.

(B) ARMS SALES.—The United States Government shall terminate—

(i) sales to that country under the Arms Export Control Act of any defense

1 articles, defense services, or design and
2 construction services; and

3 (ii) licenses for the export to that
4 country of any item on the United States
5 Munitions list.

6 (C) ARMS SALES FINANCING.—The United
7 States Government shall terminate all foreign
8 military financing for that country under the
9 Arms Export Control Act.

10 (D) DENIAL OF UNITED STATES GOVERN-
11 MENT CREDIT OR OTHER FINANCIAL ASSIST-
12 ANCE.—The United States Government shall
13 deny to that country any credit, credit guaran-
14 tees, or other financial assistance by any de-
15 partment, agency, or instrumentality of the
16 United States Government, including the Ex-
17 port-Import Bank of the United States.

18 (E) EXPORTS OF NATIONAL SECURITY-
19 SENSITIVE ITEMS.—The authorities of this title
20 shall be used to prohibit the export to that
21 country of any items controlled or prohibited
22 for export under section 106(i).

23 (F) IMPORTS.—There shall be a prohibi-
24 tion on the importation into the United States
25 of goods that are the growth, produce, or man-

1 manufacture of that country in an amount equal to
2 or greater than the dollar value of exports pro-
3 hibited under subparagraph (E).

4 (5) ADDITIONAL SANCTIONS IF CERTAIN CONDI-
5 TIONS NOT MET.—Unless, within 3 months after
6 making a determination under paragraph (1) with
7 respect to a foreign government, the President deter-
8 mines and certifies, in writing, to the Congress
9 that—

10 (A) the government is no longer using
11 weapons of mass destruction in violation of
12 international law or using weapons of mass de-
13 struction against its own nationals,

14 (B) the government has provided reliable
15 assurances that it will not, in the future, en-
16 gage in any such activities, and

17 (C) the government is willing to allow on-
18 site inspections by United Nations observers or
19 other internationally recognized, impartial ob-
20 servers, or other reliable means exist, to ensure
21 that government is not using lethal weapons of
22 mass destruction in violation of international
23 law and is not using lethal weapons of mass de-
24 struction against its own nationals,

1 then the President, after consultation with the Con-
2 gress, shall impose on that country for a period of
3 at least 2 years the sanctions set forth in at least
4 3 of subparagraphs (A) through (F) of paragraph
5 (6).

6 (6) ADDITIONAL SANCTIONS FOR USE OF WEAP-
7 ONS OF MASS DESTRUCTION.—The sanctions re-
8 ferred to in paragraph (5) are the following:

9 (A) MULTILATERAL DEVELOPMENT BANK
10 ASSISTANCE.—The United States Government
11 shall oppose, in accordance with section 701 of
12 the International Financial Institutions Act (22
13 U.S.C. 262d), the extension of any loan or fi-
14 nancial or technical assistance to that country
15 by international financial institutions.

16 (B) BANK LOANS.—The United States
17 Government shall prohibit any United States
18 bank from making any loan or providing any
19 credit to the government of that country, except
20 for loans or credits for the purpose of purchas-
21 ing food or other agricultural commodities or
22 products.

23 (C) FURTHER RESTRICTIONS.—(i) The au-
24 thorities of this title shall be used to prohibit

1 exports to the country of all items (except for
2 those items described in section 114(k)).

3 (ii) Restrictions shall be imposed on the
4 importation into the United States of goods
5 (which may include petroleum or any petroleum
6 product) that are the growth, product, or man-
7 ufacture of that country.

8 (D) DIPLOMATIC RELATIONS.—The Presi-
9 dent shall use his or her constitutional authori-
10 ties to downgrade or suspend diplomatic rela-
11 tions between the United States and the gov-
12 ernment of that country.

13 (E) PRESIDENTIAL ACTION REGARDING
14 AVIATION.—

15 (i)(I) The President is authorized to
16 notify the government of that country of
17 his or her intention to suspend the author-
18 ity of foreign air carriers owned or con-
19 trolled by the government of that country
20 to engage in foreign air transportation to
21 or from the United States.

22 (II) Within 10 days after the date of
23 notification of a government under
24 subclause (I), the Secretary of Transpor-
25 tation shall take all steps necessary to sus-

1 pend at the earliest possible date the au-
2 thority of any foreign air carrier owned or
3 controlled, directly or indirectly, by that
4 government to engage in foreign air trans-
5 portation to or from the United States,
6 notwithstanding any agreement relating to
7 air services.

8 (ii)(I) The President may direct the
9 Secretary of State to terminate any air
10 service agreement between the United
11 States and that country, in accordance
12 with the provisions of that agreement.

13 (II) Upon termination of an agree-
14 ment under this clause, the Secretary of
15 Transportation shall take such steps as
16 may be necessary to revoke at the earliest
17 possible date the right of any foreign air
18 carrier owned or controlled, directly or in-
19 directly, by the government of that country
20 to engage in foreign air transportation to
21 or from the United States.

22 (iii) The Secretary of Transportation
23 may provide for such exceptions from
24 clauses (i) and (ii) as the Secretary consid-
25 ers necessary to provide for emergencies in

1 which the safety of an aircraft or its crew
2 or passengers is threatened.

3 (iv) For purposes of this subpara-
4 graph, the terms "air transportation", "air
5 carrier", "foreign air carrier", and "for-
6 eign air transportation" have the meanings
7 such terms have under section 101 of the
8 Federal Aviation Act of 1958 (49 U.S.C.
9 App. 1301).

10 (c) REMOVAL OF SANCTIONS.—

11 (1) FOR VIOLATIONS UNDER SUBSECTION (a)
12 .—The President shall remove the sanctions imposed
13 under paragraph (1) or (2) of subsection (a) if the
14 President determines and so certifies to the Con-
15 gress, after the end of the 12-month period begin-
16 ning on the date on which the sanctions were ini-
17 tially imposed, that—

18 (A) reliable information indicates that the
19 United States person or foreign person with re-
20 spect to which the determination was made
21 under—

22 (i) subsection (a)(1) has ceased all ac-
23 tivities that gave rise to the sanctions; or

24 (ii) subsection (a)(2) has ceased to aid
25 or abet any government, group, entity, or

1 project to use, design, develop, produce,
2 stockpile, or otherwise acquire weapons of
3 mass destruction or missiles or acquire
4 unsafeguarded special nuclear material;
5 and

6 (B) the President has received reliable as-
7 surances from that United States person or for-
8 eign person that such person will not, in the fu-
9 ture, perform any of the actions described in
10 subsection (a)(1) or (2).

11 (2) FOR VIOLATIONS UNDER SUBSECTION
12 (b).—The President shall remove the sanctions im-
13 posed with respect to a country under paragraph (4)
14 or (6) of subsection (b) if the President determines
15 and so certifies to the Congress, after the end of the
16 12-month period beginning on the date on which
17 such sanctions were initially imposed, that—

18 (A) the government of that country has
19 provided reliable assurances that it will not use
20 weapons of mass destruction in violation of
21 international law and will not use lethal weap-
22 ons of mass destruction against its own nation-
23 als;

24 (B) the government is not making prepara-
25 tions to use weapons of mass destruction in vio-

1 lation of international law or to use lethal weap-
2 ons of mass destruction against its own nation-
3 als;

4 (C) the government is willing to allow on-
5 site inspections by United Nations observers or
6 other internationally recognized, impartial ob-
7 servers to verify that it is not making prepara-
8 tions to use lethal weapons of mass destruction
9 in violation of international law or to use lethal
10 weapons of mass destruction against its own
11 nationals, or other reliable means exist to verify
12 that it is not making such preparations; and

13 (D) the government is making restitution
14 to those affected by any use of lethal weapons
15 of mass destruction in violation of international
16 law or by any use of lethal weapons of mass de-
17 struction against its own nationals.

18 (d) WAIVERS FOR VIOLATIONS UNDER SUBSECTION

19 (a).—

20 (1) WAIVER.—The President may waive the im-
21 position of sanctions under paragraph (1) or (2) of
22 subsection (a) with respect to a product or service
23 if the President certifies to the Congress that—

24 (A) the product or service is essential to
25 the national security of the United States; and

1 (B) the sanctioned entity is a sole source
2 supplier of the product or service, the product
3 or service is not available from any alternative
4 reliable supplier, and the need for the product
5 or service cannot be met in a timely manner by
6 improved manufacturing processes or techno-
7 logical developments.

8 (2) ADDITIONAL WAIVER.—(A) The President
9 may waive the imposition of any sanction under sub-
10 section (a)(2) if the President determines such waiv-
11 er is essential to the national security of the United
12 States.

13 (B) If the President decides to apply the waiver
14 described in subparagraph (A), the President shall
15 so notify the Congress not less than 20 working days
16 before issuing the waiver. Such notification shall in-
17 clude a report fully articulating the rationale and
18 circumstances which led the President to exercise
19 the waiver authority.

20 (3) EXCEPTIONS.—The President shall not
21 apply the sanction under subsection (a)(2) prohibit-
22 ing the importation of the products of a sanctioned
23 entity—

24 (A) in the case of procurement of defense
25 articles or defense services—

1 (i) under existing contracts or sub-
2 contracts, including the exercise of options
3 for production quantities to satisfy require-
4 ments essential to the national security of
5 the United States;

6 (ii) if the President determines that
7 the entity to which the sanctions would be
8 applied is a sole source supplier of the de-
9 fense articles and services, that the defense
10 articles or services are essential to the na-
11 tional security of the United States, and
12 that alternative sources are not readily or
13 reasonably available; or

14 (iii) if the President determines that
15 such articles or services are essential to the
16 national security of the United States
17 under defense coproduction agreements or
18 Programs of Cooperation of the North At-
19 lantic Treaty Association;

20 (B) to products or services provided under
21 contracts entered into before the date on which
22 the President publishes his intention to impose
23 the sanctions; or

24 (C) to—

25 (i) spare parts,

(ii) components parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or production.

(e) WAIVERS OF VIOLATIONS UNDER SUBSECTION (b).—

(1) CRITERIA FOR WAIVER.—The President may waive the application of any sanction imposed with respect to a country under paragraph (4) or (6) of subsection (b)—

(A) if—

(i) in the case of any sanction other than a sanction specified in subsection (b)(4)(F) or (b)(6)(C)(ii) (relating to import restrictions) or (b)(6)(D) (relating to the downgrading or suspension of diplomatic relations), the President determines and certifies to the Congress that such waiver is essential to the national security

1 interests of the United States, and the
2 President notifies the Committee on For-
3 eign Relations of the Senate and the Com-
4 mittee on Foreign Affairs of the House of
5 Representatives of his or her determination
6 and certification at least 15 days before
7 the waiver takes effect, in accordance with
8 the procedures applicable to
9 reprogramming notifications under section
10 634A of the Foreign Assistance Act of
11 1961, or

12 (ii) in the case of any sanction speci-
13 fied in subsection (b)(4)(F) or (b)(6)(C)(ii)
14 (relating to import restrictions), the Presi-
15 dent determines and certifies to the Con-
16 gress that such waiver is essential to the
17 national security interests of the United
18 States, and the President notifies the Com-
19 mittee on Finance of the Senate and the
20 Committee on Ways and Means and the
21 Committee on Foreign Affairs of the
22 House of Representatives of his or her de-
23 termination and certification at least 15
24 days before the waiver takes effect; or

(B) if the President determines and certifies to the Congress that there has been a fundamental change in the leadership and policies of the government of that country, and if the President notifies the Congress at least 20 days before the waiver takes effect.

(2) REPORT.—In the event that the President decides to exercise the waiver authority provided in paragraph (1) with respect to a country, the President's notification to the Congress under such paragraph shall include a report fully articulating the rationale and circumstances which led the President to exercise that waiver authority, including a description of the steps which the government of that country has taken to satisfy the conditions set forth in subparagraphs (A) through (D) of subsection (c)(2).

(f) CONTRACT SANCTITY.—

(1) SANCTIONS NOT APPLIED TO EXISTING CONTRACTS.—(A) A sanction described in subparagraph (D), (E), or (F) of subsection (b)(4) or in any of subparagraphs (A) through (C) of subsection (b)(6) shall not apply to any activity pursuant to any contract or international agreement entered into before the date of the presidential determination under subsection (b)(1) unless the President deter-

1 mines, on a case-by-case basis, that to apply such
2 sanction to that activity would prevent the perform-
3 ance of a contract or agreement that would have the
4 effect of assisting a country in using lethal weapons
5 of mass destruction in violation of international law
6 or in using lethal weapons of mass destruction
7 against its own nationals.

8 (B) The same restrictions of section 114(l) (re-
9 lating to contract sanctity) which are applicable to
10 exports prohibited under this title shall apply to ex-
11 ports prohibited under subsection (b)(4)(E) or
12 (b)(6)(C)(i). For purposes of this subparagraph, any
13 contract or agreement the performance of which (as
14 determined by the President) would have the effect
15 of assisting a foreign government in using weapons
16 of mass destruction in violation of international law
17 or in using lethal weapons of mass destruction
18 against its own nationals shall be treated as con-
19 stituting a breach of the peace that poses a serious
20 and direct threat to the strategic interest of the
21 United States, within the meaning of subparagraph
22 (A) of section 114(l)(2).

23 (2) SANCTIONS APPLIED TO EXISTING CON-
24 TRACTS.—The sanctions described in subparagraphs
25 (A), (B), and (C) of subsection (b)(4) shall apply to

1 contracts, agreements, and licenses without regard
2 to the date the contract or agreement was entered
3 into or the license was issued (as the case may be),
4 except that such sanctions shall not apply to any
5 contract or agreement entered into or license issued
6 before the date of the presidential determination
7 under subsection (b)(1) if the President determines
8 that the application of such sanction would be det-
9 rimental to the national security interests of the
10 United States.

11 (g) PROTECTION OF CLASSIFIED INFORMATION.—To
12 the extent practicable, reports submitted under this sec-
13 tion should be based on unclassified information. Portions
14 of such reports may be classified.

15 SEC. 112. ADMINISTRATIVE AND JUDICIAL REVIEW.

16 (a) APPLICABILITY.—

17 (1) EXEMPTIONS FROM ADMINISTRATIVE PRO-
18 CEDURE.—Except as provided in this section, sec-
19 tions 551 and 553 through 559 of title 5, United
20 States Code, do not apply to the functions exercised
21 under this title.

22 (2) JUDICIAL REVIEW.—(A) Subject to sub-
23 paragraphs (B) and (C) and except as otherwise
24 provided in this section, actions under this title shall

1 be subject to judicial review under chapter 7 of title
2 5, United States Code.

3 (B) Any discretionary determination of whether
4 a commodity or technology should or should not be
5 on the control index shall not be subject to judicial
6 review.

7 (C) An action to obtain judicial review under
8 this subsection may be brought in the appropriate
9 United States district court.

10 (b) PROCEDURES RELATING TO CIVIL PENALTIES
11 AND SANCTIONS.—

12 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
13 ministrative sanction imposed under section 110(c)
14 may be imposed only after notice and opportunity
15 for an agency hearing on the record in accordance
16 with sections 554 through 557 of title 5, United
17 States Code.

18 (2) AVAILABILITY OF CHARGING LETTER.—Any
19 charging letter or other document initiating adminis-
20 trative proceedings for the imposition of sanctions
21 for violations of the regulations issued under section
22 108(a) shall be made available for public inspection
23 and copying.

24 (c) COLLECTION.—If any person fails to pay a civil
25 penalty imposed under section 110(c), the Secretary may

1 ask the Attorney General to bring a civil action in an ap-
2 propriate district court to recover the amount imposed
3 (plus interest at currently prevailing rates from the date
4 of the final order).

5 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

6 (1) GROUNDS FOR IMPOSITION.—In any case in
7 which there is reasonable cause to believe that a per-
8 son is engaged in or is about to engage in any act
9 or practice which constitutes or would constitute a
10 violation of this title, or any regulation, order, or li-
11 cense issued under this title, or in any case in which
12 a criminal indictment has been returned against a
13 person alleging a violation of this title or any of the
14 statutes listed in section 110(f), the Secretary may,
15 without a hearing, issue an order temporarily deny-
16 ing that person's United States export privileges
17 (hereafter in this subsection referred to a "tem-
18 porary denial order"). A temporary denial order may
19 be effective for no longer than 180 days, but may be
20 renewed by the Secretary, following notice and an
21 opportunity for a hearing, for additional periods of
22 not more than 180 days each.

23 (2) ADMINISTRATIVE APPEALS.—The person or
24 persons subject to the issuance or renewal of a tem-
25 porary denial order may appeal the issuance or re-

newal of the temporary denial order, supported by
briefs and other material, to an administrative law
judge who shall, within 15 working days after the
appeal is filed, issue a decision affirming, modifying,
or vacating the temporary denial order. The tem-
porary denial order shall be affirmed if it is shown
that there is reasonable cause to believe that the
person subject to the order is engaged in or is about
to engage in any act or practice which constitutes or
would constitute a violation of this title, or any regu-
lation, order, or license issued under this title, or if
it is shown that a criminal indictment has been re-
turned against the person subject to the order alleg-
ing a violation of this title or any of the statutes list-
ed in section 110(f). The decision of the administra-
tive law judge shall be final unless, within 10 work-
ing days after the date of the administrative law
judge's decision, an appeal is filed with the Sec-
retary. On appeal, the Secretary shall either affirm,
modify, reverse, or vacate the decision of the admin-
istrative law judge by written order within 10 work-
ing days after receiving the appeal. The written
order of the Secretary shall be final and is not sub-
ject to judicial review, except as provided in para-
graph (3). The materials submitted to the adminis-

1 trative law judge and the Secretary shall constitute
2 the administrative record for purposes of review by
3 the court.

4 (3) COURT APPEALS.—An order of the Sec-
5 retary affirming, in whole or in part, the issuance or
6 renewal of a temporary denial order may, within 15
7 days after the order is issued, be appealed by a per-
8 son subject to the order to the United States Court
9 of Appeals for the District of Columbia Circuit,
10 which shall have jurisdiction of the appeal. The
11 court may review only those issues necessary to de-
12 termine whether the issuance of the temporary de-
13 nial order was based on reasonable cause to believe
14 that the person subject to the order was engaged in
15 or was about to engage in any act or practice which
16 constitutes or would constitute a violation of this
17 title, or any regulation, order, or license issued
18 under this title, or if a criminal indictment has been
19 returned against the person subject to the order al-
20 leging a violation of this title or any of the statutes
21 listed in section 110(f). The court shall vacate the
22 Secretary's order if the court finds that the Sec-
23 retary's order is arbitrary, capricious, an abuse of
24 discretion, or otherwise not in accordance with law.

(e) APPEALS FROM LICENSING AND CLASSIFICATION

ACTIONS.—

(1) LICENSE DENIALS.—A determination of the Secretary under section 109 to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. Subject to the limitations provided in section 114(f), the Secretary's decision shall be published in the Federal Register.

(2) CLASSIFICATION DECISIONS.—(A) Within 30 days after the issuance of a classification decision under section 109(h)(1), or within 30 days after the failure to issue such a classification decision in response to a request for such a decision, any United States person aggrieved by such decision or failure may file an appeal thereof to an administrative law

1 judge, but only on issues regarding classification de-
2 cisions under section 109(h)(1) including, but not
3 limited to, decisions of whether an item is covered by
4 any general or specific note. The administrative law
5 judge may not review determinations as to the reli-
6 ability of an end user or the nature of an end use
7 or end user. The administrative law judge shall,
8 within 90 days after such appeal is filed, issue his
9 or her decision and issue any order that is necessary
10 or appropriate to carry out such decision. Such
11 order shall be binding upon the Secretary unless and
12 until vacated or modified under subparagraph (B).
13 Such order may be stayed by the administrative law
14 judge or the Secretary pending the filing and deter-
15 mination of an appeal under subparagraph (B).

16 (B) Any United States person aggrieved by a
17 decision of the administrative law judge under sub-
18 paragraph (A) may appeal such decision to the Sec-
19 retary within 45 days after receiving notification of
20 such decision. The Secretary shall, in a written
21 order, affirm, modify, or vacate the decision of the
22 administrative law judge within 30 days after such
23 appeal is filed. The Secretary's decision on the ap-
24 peal shall be subject to judicial review as provided
25 in subsection (a)(2). The authority of the Secretary

1 under this paragraph may not be delegated to an of-
2 ficer or employee of the Bureau of Export Adminis-
3 tration.

4 (3) PUBLICATION OF DECISION.—Subject to the
5 limitations of section 114(g), final decisions of ad-
6 ministrative law judges and the Secretary under this
7 subsection shall be published in the Federal Register
8 within 15 days after they are rendered.

9 (4) CONDUCT OF PROCEEDINGS.—Except as
10 provided in this subsection, proceedings under this
11 subsection shall be conducted in accordance with
12 sections 554 (notwithstanding subsection (a)(4) of
13 such section), 556, and 557 of title 5, United States
14 Code.

15 (5) REGULATIONS.—The Secretary shall issue
16 such regulations as are necessary to carry out this
17 subsection.

18 (6) OTHER RIGHTS NOT AFFECTED.—The
19 rights granted by this subsection do not abridge any
20 other rights provided by law.

21 (7) EFFECTIVE DATE.—This subsection shall
22 take effect 120 days after the date of the enactment
23 of this Act. Regulations implementing this sub-
24 section shall be promulgated no later than such ef-
25 fective date.

2 (a) GENERAL AUTHORITY AND DESIGNATION.—

3 (1) POLICY GUIDANCE ON ENFORCEMENT.—

4 The Secretary, in consultation with the Secretary of
5 the Treasury and the heads of other appropriate de-
6 partments and agencies, shall be responsible for pro-
7 viding policy guidance on the enforcement of this
8 title.

9 (2) GENERAL AUTHORITIES.—(A) To the extent
10 necessary or appropriate to the enforcement of this
11 title or to the imposition of any penalty, forfeiture,
12 or liability arising under the Export Administration
13 Act of 1979, officers or employees of the Depart-
14 ment of Commerce designated by the Secretary and
15 officers and employees of the United States Customs
16 Service designated by the Commissioner may exer-
17 cise the enforcement authorities described in para-
18 graph (3).

19 (B) In carrying out the enforcement authorities
20 described in paragraph (3), the Commissioner of
21 Customs, and employees of the United States Cus-
22 toms Service designated by the Commissioner, may
23 make investigations within or outside the United
24 States and at those ports of entry or exit from the
25 United States where officers of the United States
26 Customs Service are authorized by law to carry out

1 such enforcement responsibilities. Subject to para-
2 graph (3), the United States Customs Service is au-
3 thorized, in the enforcement of this title, to search,
4 detain (after search), and seize commodities or tech-
5 nology at those ports of entry or exit from the Unit-
6 ed States where officers of the Customs Service are
7 authorized by law to conduct such searches, deten-
8 tions, and seizures. and at those places outside the
9 United States where the Customs Service, pursuant
10 to agreements or other arrangements with other
11 countries, is authorized to perform enforcement ac-
12 tivities.

13 (C) In carrying out the enforcement authorities
14 described in paragraph (3), the Secretary, and offi-
15 cers and employees of the Department of Commerce
16 designated by the Secretary, may make investiga-
17 tions within the United States, and shall conduct,
18 outside the United States, pre-license and post-ship-
19 ment verifications of items licensed for export and
20 investigations in the enforcement of section 108. The
21 Secretary, and officers and employees of the Depart-
22 ment of Commerce designated by the Secretary, are
23 authorized to search, detain (after search), and seize
24 items at those places within the United States other
25 than those ports and borders specified in subpara-

graph (B). The search, detention (after search), or seizure of items at those ports and borders specified in subparagraph (B) may only be conducted by officers and employees of the Department of Commerce with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(D) The Secretary and the Commissioner of Customs may enter into agreements and arrangements for the enforcement of this title, including foreign investigations and information exchange.

(3) SPECIFIC AUTHORITIES.—(A) Any officer or employee designated under paragraph (2) may do the following in carrying out the enforcement authority under this title:

(i) Make investigations of, obtain information from, make inspection of any books, records, or reports (including any writings required to be kept by the Secretary) premises, or property of, and take the sworn testimony of, any person.

(ii) Administer oaths or affirmations, and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both. In the case of contumacy by, or refusal to obey a subpoena issued

1 to, any such person, a district court of the
2 United States, after notice to any such person
3 and hearing, shall have jurisdiction to issue an
4 order requiring such person to appear and give
5 testimony or to appear and produce books,
6 records, and other writings, or both. Any failure
7 to obey such order of the court may be pun-
8 ished by such court as a contempt thereof.

9 (iii) Execute any warrant or other process
10 issued by a court or officer of competent juris-
11 diction with respect to the enforcement of this
12 title.

13 (iv) Make arrests without warrant for any
14 violation of this title committed in his or her
15 presence or view, or if the officer or employee
16 has probable cause to believe that the person to
17 be arrested has committed, is committing, or is
18 about to commit such a violation.

19 (v) Carry firearms.

20 (vi) Detain (after search) or seize any
21 item, for purposes of securing for trial or for-
22 feiture to the United States, on or about such
23 vehicle, vessel, aircraft, or person, or in such
24 package or container, if the officer or employee
25 has probable cause to believe the item has been,

1 is being, or is about to be exported from or
2 transited through the United States in violation
3 of this title.

4 (B) Officers and employees of the United
5 States Customs Service designated by the Commis-
6 sioner of Customs under paragraph (2) may do the
7 following in carrying out the enforcement authority
8 under this title:

9 (i) Stop, search, and examine a vehicle,
10 vessel, aircraft, or person on which or whom the
11 officer or employee has reasonable cause to sus-
12 pect there is any item that has been, is being,
13 or is about to be exported from or transited
14 through the United States in violation of this
15 title.

16 (ii) Detain and search any package or con-
17 tainer in which the officer or employee has rea-
18 sonable cause to suspect there is any item that
19 has been, is being, or is about to be exported
20 from or transited through the United States in
21 violation of this title.

22 (4) OTHER AUTHORITIES NOT AFFECTED.—The
23 authorities conferred by this section are in addition
24 to any authorities conferred under other laws.

1 (b) FORFEITURE.—All commodities or tangible items
2 lawfully seized under subsection (a) by designated officers
3 or employees shall be subject to forfeiture to the United
4 States. Those provisions of law relating to—

5 (1) the seizure, summary and judicial forfeiture,
6 and condemnation of property for violations of the
7 customs laws,

8 (2) the disposition of such property or the pro-
9 ceeds from the sale thereof,

10 (3) the remission or mitigation of such forfeit-
11 ures, and

12 (4) the compromise of claims,

13 shall apply to seizures and forfeitures incurred, or alleged
14 to have been incurred, under the provisions of this sub-
15 section, insofar as applicable and not inconsistent with
16 this title; except that such duties as are imposed upon the
17 customs officer or any other person with respect to the
18 seizure and forfeiture of property under the customs laws
19 shall be performed with respect to seizures and forfeitures
20 of property under this subsection by the Secretary or such
21 officers and employees of the Department of Commerce
22 as may be authorized or designated for that purpose by
23 the Secretary, or, upon the request of the Secretary, by
24 any other agency that has authority to manage and dis-
25 pose of seized property.

1 (c) REFERRAL OF CASES.—All cases involving viola-
 2 tions of this title shall be referred to the Secretary for
 3 purposes of determining civil penalties and administrative
 4 sanctions under section 110(c), or to the Attorney General
 5 for criminal action in accordance with this title.

6 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

7 (1) USE OF FUNDS.—With respect to any un-
 8 dercover investigative operation conducted by the Of-
 9 fice of Export Enforcement of the Department of
 10 Commerce (hereinafter in this subsection referred to
 11 as “OEE”) necessary for the detection and prosecu-
 12 tion of violations of this title—

13 (A) funds made available for export en-
 14 forcement under this title may be used to pur-
 15 chase property, buildings, and other facilities,
 16 and to lease space within the United States,
 17 without regard to sections 1341 and 3324 of
 18 title 31, United States Code, the third undesignated
 19 paragraph under the heading of “MIS-
 20 CELLANEOUS” of the Act of March 3, 1877, (40
 21 U.S.C. 34), sections 3732(a) and 3741 of the
 22 Revised Statutes of the United States (41
 23 U.S.C. 11(a) and 22), and subsections (a) and
 24 (c) of section 304, and section 305 of the Fed-

1 eral Property and Administrative Services Act
2 of 1949 (41 U.S.C. 254(a) and (c) and 255),

3 (B) funds made available for export en-
4 forcement under this title may be used to estab-
5 lish or to acquire proprietary corporations or
6 business entities as part of an undercover oper-
7 ation, and to operate such corporations or busi-
8 ness entities on a commercial basis, without re-
9 gard to section 9102 of title 31, United States
10 Code,

11 (C) funds made available for export en-
12 forcement under this title and the proceeds
13 from undercover operations may be deposited in
14 banks or other financial institutions without re-
15 gard to the provisions of section 648 of title 18,
16 United States Code, and section 3302 of title
17 31, United States Code, and

18 (D) the proceeds from undercover oper-
19 ations may be used to offset necessary and rea-
20 sonable expenses incurred in such operations
21 without regard to the provisions of section 3302
22 of title 31, United States Code,

23 if the Director of OEE (or an officer or employee
24 designated by the Director) certifies, in writing, that
25 the action authorized by subparagraph (A), (B), (C),

1 or (D) for which the funds would be used is nec-
2 essary for the conduct of the undercover operation.

3 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
4 corporation or business entity established or ac-
5 quired as part of an undercover operation with a net
6 value of more than \$50,000 is to be liquidated, sold,
7 or otherwise disposed of, the Director of OEE shall
8 report the circumstances to the Secretary and the
9 Comptroller General, as much in advance of such
10 disposition as the Director of OEE or his or her des-
11 ignee determines is practicable. The proceeds of the
12 liquidation, sale, or other disposition, after obliga-
13 tions incurred by the corporation or business enter-
14 prise are met, shall be deposited in the Treasury of
15 the United States as miscellaneous receipts.

16 (3) DEPOSIT OF PROCEEDS.—As soon as the
17 proceeds from an OEE undercover investigative op-
18 eration with respect to which an action is authorized
19 and carried out under this subsection are no longer
20 necessary for the conduct of such operation, such
21 proceeds or the balance of such proceeds remaining
22 at the time shall be deposited into the Treasury of
23 the United States as miscellaneous receipts.

24 (4) AUDIT AND REPORT.—(A) The Director of
25 OEE shall conduct a detailed financial audit of each

OEE undercover investigative operation which is closed and shall submit the results of the audit in writing to the Secretary. Not later than 180 days after an undercover operation is closed, the Secretary shall submit to the Congress a report on the results of the audit.

(B) The Secretary shall submit annually to the Congress a report, which may be included in the annual report under section 115, specifying the following information:

(i) The number of undercover investigative operations pending as of the end of the period for which such report is submitted.

(ii) The number of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted.

(iii) The number of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

(5) DEFINITIONS.—For purposes of paragraph

(4)—

1 (A) the term "closed", with respect to an
2 undercover investigative operation, refers to the
3 earliest point in time at which all criminal pro-
4 ceedings (other than appeals) pursuant to the
5 investigative operation are concluded, or covert
6 activities pursuant to such operation are con-
7 cluded, whichever occurs later;

8 (B) the terms "undercover investigative
9 operation" and "undercover operation" mean
10 any undercover investigative operation con-
11 ducted by OEE—

12 (i) in which the gross receipts (exclud-
13 ing interest earned) exceed \$25,000, or ex-
14 penditures (other than expenditures for
15 salaries of employees) exceed \$75,000, and

16 (ii) which is exempt from section 3302
17 or 9102 of title 31, United States Code,
18 except that clauses (i) and (ii) shall not apply
19 with respect to the report to the Congress re-
20 quired by subparagraph (B) of paragraph (4);
21 and

22 (C) the term "employees" means employ-
23 ees, as defined in section 2105 of title 5, United
24 States Code, of the Department of Commerce.

(e) REFERENCE TO ENFORCEMENT.—For purposes of this section, a reference to the enforcement of this title or to a violation of this title includes a reference to the enforcement or a violation of any regulation, license, or order issued under this title.

SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCEDURES.

(a) AUTHORITIES AND POLICY GUIDANCE.—

(1) AUTHORITIES OF THE PRESIDENT.—The President may regulate domestic and foreign conduct, consistent with the policies of this title. Such authority shall include, but not be limited to, the authority to prohibit activity such as financing, contracting, servicing, or employment, to deny access to items in the United States and abroad, to conduct audits of records and inspections of facilities, to compel reports, and to implement international commitments of the United States with respect to the control of exports.

(2) POLICY GUIDANCE.—As directed by the President, annual policy guidance shall be issued to provide detailed implementing guidance to export licensing officials in all appropriate departments and agencies.

(b) EXPORT CONTROL AUTHORITY AND FUNCTIONS.—

(1) IN GENERAL.—Unless otherwise reserved to the President or a department or agency outside the Department of Commerce, all power, authority, and discretion conferred by this title shall be exercised by the Secretary.

(2) UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION.—The Secretary may delegate any function under this title to the Under Secretary of Commerce for Export Administration appointed under subsection (d) or to any other officer of the Department of Commerce.

(c) EXPORT CONTROL POLICY COMMITTEE.—

(1) ESTABLISHMENT.—There is established an Export Control Policy Committee (hereafter in this subsection referred to as the “Committee”).

(2) FUNCTIONS.—The Committee shall—

(A) provide policy guidance and advice to the President on export control issues under this title;

(B) review policy recommendations proposed by the Secretary and other members of the Committee; and

1 (C) receive policy recommendations from
2 other agencies and resolve any policy disputes
3 among departments and agencies under this
4 title.

5 (3) MEMBERSHIP.—The Committee shall be
6 comprised of—

7 (A) the Secretary;

8 (B) the Secretary of Defense;

9 (C) the Secretary of Energy;

10 (D) the Secretary of State;

11 (E) the National Security Adviser;

12 (F) the National Economic Adviser;

13 (G) the Secretary of the Treasury; and

14 (H) the United States Trade Representa-
15 tive.

16 (4) CHAIR.—The Committee shall be jointly
17 chaired by the National Economic Adviser and the
18 National Security Adviser.

19 (5) DELEGATION; OTHER REPRESENTATIVES.—
20 A member of the Committee under paragraph (3)
21 may designate the deputy head of his or her depart-
22 ment or agency to serve in his or her absence as a
23 member of the Committee, but this authority may
24 not be delegated to any other individual. The Chairs
25 may also invite the temporary participation in the

1 Committee's meetings of representatives from other
2 offices and agencies as appropriate to the issues
3 under consideration.

4 (6) MEETINGS.—The Secretary or either Chair
5 of the Committee may call a meeting of the Commit-
6 tee. Meetings shall not be subject to section 552b of
7 title 5, United States Code.

8 (d) UNDER SECRETARY OF COMMERCE; ASSISTANT
9 SECRETARIES.—

10 (1) APPOINTMENT.—The President shall ap-
11 point, by and with the advice and consent of the
12 Senate, an Under Secretary of Commerce for Export
13 Administration who shall carry out all functions of
14 the Secretary under this title and other provisions of
15 law relating to national security, as the Secretary
16 may delegate. The President shall appoint, by and
17 with the advice and consent of the Senate, two As-
18 sistant Secretaries of Commerce to assist the Under
19 Secretary in carrying out such functions.

20 (2) TRANSITION PROVISIONS.—Those individ-
21 uals serving in the positions of Under Secretary of
22 Commerce for Export Administration and Assistant
23 Secretaries of Commerce under section 15(a) of the
24 Export Administration Act of 1979, on the day be-
25 fore the date of the enactment of this Act, shall be

1 deemed to have been appointed under paragraph (1)
2 as of such date of enactment.

3 (e) ISSUANCE OF REGULATIONS.—The President and
4 the Secretary may issue such regulations as are necessary
5 to carry out this title. Any such regulations the purpose
6 of which is to carry out section 105 or 106 may be issued
7 only after the regulations are submitted for review to such
8 departments or agencies as the President considers appro-
9 priate, and to any appropriate export advisory committee
10 appointed under section 104(f). The preceding sentence
11 does not require the concurrence or approval of any offi-
12 cial, department, or agency to which such regulations are
13 submitted.

14 (f) AMENDMENTS TO REGULATIONS.—If the Sec-
15 retary proposes to amend regulations issued under this
16 title, the Secretary shall report to the Committee on Bank-
17 ing, Housing, and Urban Affairs of the Senate and the
18 Committee on Foreign Affairs of the House of Representa-
19 tives on the intent and rationale of such amendments.
20 Such report shall evaluate the cost and burden to the
21 United States exporters of the proposed amendments in
22 relation to any enhancement of licensing objectives. The
23 Secretary shall consult with the appropriate export advi-
24 sory committees appointed under section 104(f) in formu-
25 lating or amending regulations issued under this title.

1 (g) CONFIDENTIALITY OF INFORMATION.—

2 (1) EXEMPTIONS FROM DISCLOSURE.—

3 (A) Except as otherwise provided by the
4 third sentence of section 108(b)(2), information
5 obtained under the Export Administration Act
6 of 1979 and its predecessor statutes on or be-
7 fore June 30, 1980, which is deemed confiden-
8 tial, including Shipper's Export Declarations, or
9 with reference to which a request for confiden-
10 tial treatment is made by the person furnishing
11 such information, shall be exempt from disclo-
12 sure under section 552 of title 5, United States
13 Code, and such information shall not be pub-
14 lished or disclosed unless the Secretary deter-
15 mines that the withholding thereof is contrary
16 to the national interest.

17 (B) Except as otherwise provided by the
18 third sentence of section 108(b)(2), information
19 obtained under this title or under the Export
20 Administration Act of 1979 after June 30,
21 1980, may be withheld from disclosure only to
22 the extent permitted by statute, except that in-
23 formation submitted, obtained, or considered in
24 connection with an application for an export li-
25 cense or other export authorization under this

1 title, including the export license or other ex-
2 port authorization itself, classification requests
3 described in section 109(h)(1), information ob-
4 tained during the course of a foreign availabil-
5 ity assessment, information or evidence ob-
6 tained in the course of any investigation, and
7 information obtained or furnished under this
8 title in connection with international agree-
9 ments, treaties, or obligations shall be withheld
10 from public disclosure unless the release of such
11 information is determined by the Secretary to
12 be in the national interest.

13 (2) INFORMATION TO CONGRESS AND GAO.—

14 (A) IN GENERAL.—Nothing in this title
15 shall be construed as authorizing the withhold-
16 ing of information from the Congress or from
17 the General Accounting Office.

18 (B) AVAILABILITY TO THE CONGRESS.—

19 (i) IN GENERAL.—All information ob-
20 tained at any time under this title or pre-
21 vious Acts regarding the control of exports,
22 including any report or license application
23 required under this title, shall, upon re-
24 quest, be made available to the Committee
25 on Foreign Affairs of the House of Rep-

1 representatives and the Subcommittee on Eco-
2 nomic Policy, Trade and the Environment
3 of such committee, and to the Committee
4 on Banking, Housing and Urban Affairs of
5 the Senate and the Subcommittee on Inter-
6 national Finance and Monetary Policy of
7 such committee. Any such committee or
8 subcommittee may provide other Members
9 of Congress information obtained under
10 the preceding sentence but such informa-
11 tion may not be further disclosed except
12 upon a finding made under clause (ii).

13 (ii) PROHIBITION ON FURTHER DIS-
14 CLOSURE.—No committee, subcommittee,
15 or Member of Congress shall disclose any
16 information obtained under this title or
17 previous Acts regarding the control of ex-
18 ports which is submitted to the Congress
19 under clause (i) unless the Committee on
20 Foreign Affairs of the House of Represent-
21 atives or the Committee on Banking,
22 Housing, and Urban Affairs of the Senate
23 determines that the withholding of that in-
24 formation is contrary to the national inter-
25 est.

1 (C) AVAILABILITY TO THE GAO.—

2 (i) IN GENERAL.—Notwithstanding
3 paragraph (1), information referred to in
4 subparagraph (B) shall, consistent with
5 the protection of intelligence, counterintel-
6 ligence, and law enforcement sources,
7 methods, and activities, as determined by
8 the agency that originally obtained the in-
9 formation, and consistent with the provi-
10 sions of section 716 of title 31, United
11 States Code, be made available only by the
12 agency, upon request, to the Comptroller
13 General of the United States or to any of-
14 ficer or employee of the General Account-
15 ing Office authorized by the Comptroller
16 General to have access to such informa-
17 tion.

18 (ii) PROHIBITION ON FURTHER DIS-
19 CLOSURES.—No officer or employee of the
20 General Accounting Office shall disclose,
21 except to the Congress in accordance with
22 this paragraph, any such information
23 which is submitted on a confidential basis
24 and from which any individual can be iden-
25 tified.

1 (3) INFORMATION EXCHANGE.—Notwithstand-
2 ing paragraph (1), the Secretary and the Commis-
3 sioner of Customs shall exchange licensing and en-
4 forcement information with each other which is nec-
5 essary to facilitate enforcement efforts and effective
6 license decisions.

7 (4) PENALTIES FOR DISCLOSURE OF CON-
8 FIDENTIAL INFORMATION.—Any officer or employee
9 of the United States, or any department or agency
10 thereof, who publishes, divulges, discloses, or makes
11 known in any manner or to any extent not author-
12 ized by law any information that—

13 (A) he or she obtains in the course of his
14 or her employment or official duties or by rea-
15 son of any examination or investigation made
16 by report or record made to or filed with, such
17 department or agency, or officer or employee
18 thereof, and

19 (B) is exempt from disclosure under this
20 subsection,

21 shall be fined not more than \$10,000, or imprisoned
22 not more than one year, or both, shall be removed
23 from office or employment, and shall be subject to
24 a civil penalty of not more than \$1,000 imposed by
25 the Secretary under section 110(c).

1 (h) AUTHORITY FOR SEMINAR AND PUBLICATIONS

2 FUND.—The Secretary is authorized to cooperate with
3 public agencies, other governments, international organi-
4 zations, private individuals, private associations, and other
5 groups in connection with seminars, publications, and re-
6 lated activities to carry out export activities, including
7 educating the public or government officials on the appli-
8 cation of this title and the regulations issued under this
9 title. The Secretary is further authorized to accept con-
10 tributions of funds, property, or services in connection
11 with such activities to recover the cost of such programs
12 and activities. Contributions may include payments for
13 materials or services provided as part of such activities.
14 The contributions collected may be retained for use in cov-
15 ering the costs of such activities, and for providing infor-
16 mation to the public with respect to this title and other
17 export control programs of the United States and other
18 governments.

19 (i) SUPPORT OF OTHER COUNTRIES' EXPORT CON-

20 TROL PROGRAM.—The Secretary is authorized to provide
21 training to officials of other countries on the principles
22 and procedures for the implementation of effective export
23 controls and shall coordinate any such training provided
24 by other departments and agencies of the United States.

1 (j) INCORPORATED COMMODITIES AND TECH-
2 NOLOGY.—

3 (1) COMMODITIES CONTAINING CONTROLLED
4 PARTS AND COMPONENTS.—Export licenses may not
5 be required under this title or any other provision of
6 law for a commodity solely because the commodity
7 contains parts or components on which export con-
8 trols are in effect under this title if such parts or
9 components—

10 (A) are essential to the functioning of the
11 commodity;

12 (B) are customarily included in sales of the
13 commodity in countries other than controlled
14 countries; and

15 (C) comprise 25 percent or less of the total
16 value of the commodity,

17 unless the commodity itself, if exported, would by
18 virtue of the functional characteristics of the com-
19 modity as a whole meet the requirements of sub-
20 paragraph (A) or (B) of section 105(a)(1).

21 (2) REEXPORTS OF FOREIGN-MADE ITEMS IN-
22 CORPORATING U.S. ITEMS.—

23 (A) COMMODITIES.—(i) No authority or
24 permission may be required under section 105
25 to reexport a commodity that is produced in a

country other than the United States and incorporates commodities that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the commodity produced in such other country is 25 percent or less of the total value of the commodity.

(ii) No authority or permission may be required under section 106 to reexport a commodity that is produced in a country other than the United States and incorporates commodities that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the commodity produced in such other country is 10 percent or less of the total value of the commodity.

(B) TECHNOLOGY.—(i) No authority or permission may be required under section 105 to reexport technology that is produced in a country other than the United States and is commingled with or drawn from technology that is produced in the United States, if the value of the controlled United States content of the technology produced in such other country is 25

1 percent or less of the total value of the tech-
2 nology.

3 (ii) No authority or permission may be re-
4 quired under section 106 to reexport technology
5 that is produced in a country other than the
6 United States and is commingled with or drawn
7 from technology that is produced in the United
8 States, if the value of the controlled United
9 States content of the technology produced in
10 such other country is 10 percent or less of the
11 total value of the technology.

12 (C) CONTROLLED CONTENT.—For pur-
13 poses of this paragraph, the “controlled United
14 States content” of a commodity or technology
15 means those commodities or technology subject
16 to the jurisdiction of the United States which
17 are incorporated into the commodity or tech-
18 nology, if the export of the commodities or tech-
19 nology from the United States to a country to
20 which the commodity or technology is to be re-
21 exported, would, at the time of the reexport, re-
22 quire a validated license.

23 (D) TREATMENT OF CERTAIN TECHNICAL
24 DATA.—For purposes of this subsection, tech-
25 nology and source code used to design or

1 produce commodities or software produced in a
2 country other than the United States are not
3 incorporated into such commodities or software.

4 (k) EXCEPTIONS FOR MEDICAL AND HUMANITARIAN
5 PURPOSES.—This title does not authorize controls on—

6 (1) medical instruments and equipment to
7 which subsection (j)(1) applies, except to the extent
8 permitted by such subsection;

9 (2) medicine or medical supplies; or

10 (3) donations of items that are intended to
11 meet basic human needs, including food, educational
12 materials, seeds, hand tools, water resources equip-
13 ment, clothing and shelter materials, and basic
14 household supplies.

15 (l) SANCTITY OF EXISTING CONTRACTS AND LI-
16 CENSES.—

17 (1) IN GENERAL.—The President may not pro-
18 hibit the export of items under section 105 or 106—

19 (A) in performance of a contract, agree-
20 ment, or other contractual commitment entered
21 into before the effective date of any export con-
22 trols imposed on such items by this title, or the
23 date on which the President reports to the Con-
24 gress the President's intention to impose con-
25 trols on the export of such items, or

1 (B) under a validated license or other au-
2 thorization issued under this title before the ef-
3 fective date of any export controls imposed on
4 such items by this title, or the date on which
5 the President reports to the Congress the Presi-
6 dent's intention to impose controls on the ex-
7 port of such items.

8 (2) EXCEPTION.—The prohibition in paragraph
9 (1) shall not apply if the President determines and
10 certifies to the Congress that—

11 (A) a breach of the peace poses a serious
12 and direct threat to the strategic interest of the
13 United States;

14 (B) the prohibition of exports under each
15 such contract, agreement, commitment, license,
16 or authorization will be directly instrumental in
17 remedying the situation posing the direct
18 threat; and

19 (C) the export controls will continue only
20 so long as the direct threat persists.

21 The authority of the President to make determina-
22 tions under this paragraph may not be delegated.

23 (m) PUBLICATION OF ACTIONS.—

24 (1) DECISIONS AND ACTIONS OF THE SEC-
25 RETARY.—

1 (A) IN GENERAL.—The Secretary shall
2 publish in the Federal Register, to the greatest
3 extent practicable, actions, procedures, and de-
4 cisions of the Secretary under this title, taking
5 into account restrictions on disclosure of classi-
6 fied or confidential information. The following
7 determinations of the Secretary shall in every
8 case be published in the Federal Register, un-
9 less a private party requested the determination
10 and asked that it not be published:

11 (i) Classification of a commodity or
12 technology on the control index.

13 (ii) Calculation of a commonly-used
14 control index parameter for a commodity
15 or technology, including all officially ac-
16 cepted composite theoretical performance
17 calculations for computers and
18 microprocessors.

19 (B) NOTICE OF REVISIONS.—Whenever the
20 Secretary makes any revision in the control
21 index with respect to any commodity or tech-
22 nology, or with respect to any country or des-
23 tination affected by controls imposed under sec-
24 tion 105 or section 106, the Secretary shall
25 publish in the Federal Register a notice of such

1 revision and shall specify in such notice under
2 which authority the revision is being made.

3 (2) EXPORT CONTROL REGIME ACTIONS.—

4 (A) IN GENERAL.—Not more than 90 days
5 after the date of the enactment of this Act, the
6 Secretary shall publish in the Federal Register
7 the full text of the lists of controlled items of
8 all export control regimes and all notes and un-
9 derstandings of the regimes concerning such
10 lists. The Secretary shall update the publication
11 under the preceding sentence at least once in
12 each 1-year period occurring after the original
13 publication under this subparagraph.

14 (B) CONTENTS.—The Secretary shall pub-
15 lish in the Federal Register—

16 (i) the full text of any agreements af-
17 fecting the lists of controlled items of all
18 export control regimes, together with all
19 notes, understandings, and other aspects of
20 such agreements and all revisions to such
21 texts;

22 (ii) subject to the limitations set forth
23 in subsection (f), decisions on requests for
24 exceptions for exports that are permitted
25 by such export control regimes;

1 (iii) other actions and decisions of
2 such export control regimes, to the maxi-
3 mum extent possible; and

4 (iv) unreliable end users with respect
5 to items on which export controls are im-
6 posed under this title, and persons to
7 whom sanctions have been applied, or
8 whose export privileges have been denied,
9 under this title.

10 (C) TIMING.—Such publication shall be
11 made not more than 30 days after the agree-
12 ments are reached, the decisions are made, the
13 actions are taken, or the information becomes
14 available, as the case may be.

15 (D) EXCEPTION.—The publication of a
16 particular matter need not be made under this
17 paragraph to the extent that the Secretary sub-
18 mits a written finding to the Congress that to
19 publish that matter would be contrary to na-
20 tional or international security, would abridge
21 the confidentiality of the decision-making proc-
22 esses of an export control regime, or would oth-
23 erwise be inconsistent with the obligations of
24 the United States to an export control regime.

1 (n) NOTIFICATION OF THE PUBLIC; CONSULTATION
2 WITH INDUSTRY; RECORDKEEPING.—

3 (1) NOTIFICATION OF THE PUBLIC.—The Sec-
4 retary shall keep the public fully apprised of changes
5 in export control policy and procedures instituted
6 under this title with a view to encouraging trade.

7 (2) CONSULTATION WITH INDUSTRY.—The Sec-
8 retary shall meet regularly with export advisory com-
9 mittees appointed under section 104(f) in order to
10 obtain their views on United States export control
11 policy and the foreign availability of commodities
12 and technology.

13 (o) DELEGATION TO COCOM.—The Secretary, or an
14 officer or employee of the Department of Commerce des-
15 ignated by the Secretary, shall be a member of the perma-
16 nent United States delegation to COCOM or its successor
17 export control regime.

18 (p) AUTHORIZATION FOR TECHNICAL DATA.—A
19 validated license authorizing the export of any commod-
20 ities or technology under this title shall also authorize the
21 export of operation technical data related to such commod-
22 ities or technology, whether or not such data is specifically
23 referenced in the license or license application, if the tech-
24 nical level of the data does not exceed the level reasonably

1 necessary to install, repair, maintain, inspect, operate, or
2 use the commodities or technology.

3 (q) LICENSES FOR SPARE PARTS NOT REQUIRED.—

4 An individual validated license shall not be required under
5 this title for replacement parts which are exported to re-
6 place on a one-for-one basis parts that were in a commod-
7 ity that was lawfully exported from the United States.

8 SEC. 115. ANNUAL REPORT.

9 (a) CONTENTS.—Not later than March 1 of each
10 year, the Secretary shall submit to the Congress a report
11 on the administration of this title during the preceding
12 calendar year. All agencies shall cooperate fully with the
13 Secretary in providing information for such report. Such
14 report shall include detailed information on the following:

15 (1) The implementation of the policies set forth
16 in section 103, including delegations of authority by
17 the President under section 104(d), consultations
18 with the export advisory committees established
19 under section 104(f), and any changes in the exer-
20 cise of the authorities contained in sections 105(a),
21 106(a), 107(a), and 108(a).

22 (2) With respect to multilateral export controls
23 imposed or maintained under section 105, the fol-
24 lowing:

1 (A) The effectiveness of each export con-
2 trol regime, as required by section 105(h), in-
3 cluding all information required by section
4 105(h)(2).

5 (B) Adjustments to multilateral export
6 controls.

7 (C) The implementation of the export li-
8 censing treatment authorized by section 105(e).

9 (D) Determinations of foreign availability
10 made under section 105(i), the criteria used to
11 make such determinations, the removal of any
12 export controls under such subsection, and any
13 evidence demonstrating a need to maintain ex-
14 port controls notwithstanding foreign availabil-
15 ity.

16 (E) The operation of the indexing system
17 under section 105(k).

18 (3) With respect to unilateral export controls
19 imposed under section 106, the following:

20 (A) The effectiveness of such controls.

21 (B) Adjustments to such controls pursuant
22 to negotiations under subsections (a)(5) and (c)
23 of section 106.

24 (C) Embargoes imposed, maintained, or re-
25 moved in accordance with section 106, including

1 descriptions of each embargo and the rationale
2 for imposing, maintaining, or removing such
3 embargo.

4 (4) Short supply controls and monitoring under
5 section 107.

6 (5) Organizational and procedural changes un-
7 dertaken in furtherance of the policies set forth in
8 this title, including changes to increase the efficiency
9 of the export licensing process and to fulfill the re-
10 quirements of section 109, including an accounting
11 of appeals received, and actions taken pursuant
12 thereto, under section 109(g).

13 (6) Violations under section 110 and enforce-
14 ment activities under section 113.

15 (7) The issuance of regulations under the au-
16 thority of this title.

17 (8) The results, in as much detail as may be in-
18 cluded consistent with the strategic and political in-
19 terests of the United States and the need to main-
20 tain the confidentiality of proprietary information, of
21 the reviews of the security control list, and any revi-
22 sions to the list resulting from such reviews, re-
23 quired by section 105.

24 (b) INFORMATION ON SECTION 111.—

1 (1) INFORMATION TO BE INCLUDED.—The
2 President shall include in each annual report under
3 subsection (a)—

4 (A) a description of the actions taken to
5 carry out section 111, including the imposition
6 and removal of sanctions under such section;

7 (B) a description of the current efforts of
8 foreign countries and subnational groups to ac-
9 quire equipment, materials, or technology to de-
10 velop, produce, or use weapons of mass destruc-
11 tion, together with an assessment of the current
12 and likely future capabilities of such countries
13 and groups to develop, produce, stockpile, de-
14 liver, transfer, or use such weapons;

15 (C) a description of—

16 (i) the use of weapons of mass de-
17 struction by foreign countries in violation
18 of international law,

19 (ii) the use of weapons of mass de-
20 struction by subnational groups,

21 (iii) substantial preparations by for-
22 eign countries and subnational groups to
23 do so, and

24 (iv) the development, production,
25 stockpiling, or use of weapons of mass de-

struction by foreign countries and
subnational groups: and

(D) a description of the extent to which
foreign persons or governments have knowingly
and materially assisted third countries or
subnational groups to acquire equipment, mate-
rial, or technology intended to develop, produce,
or use weapons of mass destruction.

(2) INFORMATION SHOULD BE UNCLASSI-
FIED.—To the extent practicable, information sub-
mitted under paragraph (1) should be based on un-
classified information.

SEC. 116. DEFINITIONS.

As used in this title:

(1) AUSTRALIA GROUP.—The term “Australia
Group” means a group of countries that have agreed
to restrict the sale of chemical weapons precursors
and equipment, including, as of the date of the en-
actment of this Act, Australia, Austria, Belgium,
Canada, Denmark, Finland, France, Germany,
Greece, Ireland, Italy, Japan, Luxembourg, the
Netherlands, New Zealand, Norway, Portugal,
Spain, Sweden, Switzerland, the United Kingdom,
and the United States.

1 (2) COCOM.—The term “COCOM” means the
2 Coordinating Committee for Multilateral Export
3 Controls.

4 (3) COMMODITY.—The term “commodity”
5 means any article, natural or manmade substance,
6 material, supply, or manufactured product, including
7 inspection and test equipment, and excluding tech-
8 nical data.

9 (4) CONTROL OR CONTROLLED.—The terms
10 “control” and “controlled” refer to a requirement
11 that an export have a validated license or written re-
12 export authorization.

13 (5) CONTROL INDEX.—The term “control
14 index” means the United States Commodity Control
15 Index established under section 104(c)(1).

16 (6) CONTROLLABLE.—The term “controllable”
17 means capable of being made subject to an effective
18 prohibition or significant restriction on exports. A
19 commodity or technology shall not be considered to
20 be controllable unless it is—

21 (A) manufactured or sold by only a limited
22 number of suppliers who can be positively iden-
23 tified;

24 (B) consumed or used by only a limited
25 number of end users who can be positively iden-

1 tified and whose export activities can be con-
2 trolled; and

3 (C) individually traceable or not easily con-
4 cealed or disguised.

5 (7) CONTROLLED COUNTRY AND CONTROLLED
6 END USER.—(A) The term “controlled country”
7 means a country identified under section 105(b)(3),
8 and a country on which controls are imposed under
9 section 106.

10 (B) The term “controlled end user” means an
11 end user identified under section 105(b)(3) and an
12 end user to which exports are controlled under sec-
13 tion 106.

14 (8) COOPERATING COUNTRY.—The term “co-
15 operating country” means a country that, pursuant
16 to an agreement or other arrangement with the
17 United States or an export control regime, controls
18 exports of items that are consistent with the criteria
19 and standards of such export control regime.

20 (9) END USE AND END USER.—(A) The term
21 “end use” means the intended application or use of
22 an item as represented by an export license appli-
23 cant.

24 (B) The term “end user” means the person lo-
25 cated abroad who is the true party in interest in ac-

1 tually receiving an export for the end use designated
2 for the export.

3 (10) EXPORT.—The term “export”—

4 (A) means—

5 (i) an actual shipment, transfer, or
6 transmission of items out of the United
7 States; and

8 (ii) a transfer to any person of items
9 either within the United States or outside
10 of the United States with the knowledge or
11 intent that the items will be shipped out-
12 side the United States, transferred, or
13 transmitted to an unauthorized end user,
14 end use, or destination; and

15 (B) includes the term “reexport”.

16 (11) EXPORT CONTROL REGIME, MULTILAT-
17 ERAL EXPORT CONTROL REGIME, MULTILATERAL
18 REGIME, AND REGIME.—The terms “export control
19 regime”, “multilateral export control regime”, “mul-
20 tilateral regime”, and “regime” each means a group
21 of two or more countries which includes the United
22 States and the purpose of which is to curtail access
23 to specified items by specified countries by means of
24 cooperative export controls.

1 (12) FINANCIAL TRANSACTION.—The term “fi-
2 nancial transaction”—

3 (A) means any transaction involving the
4 exchange, transfer, crediting, debiting, deposit,
5 withdrawal, or payment of currency, securities,
6 debt, credit, checks, other monetary instru-
7 ments, precious metals or minerals, or other
8 items of value, whether physically or by elec-
9 tronic means; and

10 (B) includes such transactions as the open-
11 ing or drawing down of letters of credit, the ex-
12 tension of a loan, the receipt of payment, and
13 the use of credit cards.

14 (13) FOREIGN AVAILABILITY, AVAILABLE IN
15 FACT TO CONTROLLED COUNTRIES.—The terms
16 “foreign availability” and “available in fact to con-
17 trolled countries” each include production or avail-
18 ability of any item in any country—

19 (A) from which the item is not restricted
20 for export to any controlled country; or

21 (B) from which such export restrictions
22 are determined by the Secretary to be ineffec-
23 tive.

24 (14) FOREIGN PERSON.—The term “foreign
25 person” means—

1 (A) any corporation, partnership, business
2 association, society, trust, organization, or other
3 nongovernmental entity created or organized
4 under the laws of a foreign country or that has
5 its principal place of business outside the Unit-
6 ed States; and

7 (B) any governmental entity of a foreign
8 country that is operating as a business enter-
9 prise.

10 (15) ITEM.—The term “item” means any com-
11 modity or technology.

12 (16) LICENSE.—The term “license” includes
13 both validated licenses and written reexport author-
14 ization.

15 (17) MEMBER OF AN EXPORT CONTROL RE-
16 GIME.—A “member” of an export control regime is
17 a country that participates in that regime.

18 (18) MISSILE.—The term “missile” means any
19 missile system or component listed in category I of
20 the MTCR Annex, and any other unmanned delivery
21 system or component of similar capability, as well as
22 the specially designed production facilities for these
23 systems.

24 (19) MISSILE TECHNOLOGY CONTROL REGIME;
25 MTCR.—The term “Missile Technology Control Re-

gime” or “MTCR” means the policy statement between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-related transfers based on the MTCR Annex, and any amendments thereto.

(20) MTCR ANNEX.—The term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto.

(21) NON-REGIME COUNTRY.—The term “non-regime country” means a country that is not a member of an export control regime, is not a cooperating country, and is not a controlled country.

(22) NUCLEAR EXPLOSIVE DEVICE.—The term “nuclear explosive device” means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

(23) NUCLEAR SUPPLIERS’ GROUP.—The term “Nuclear Suppliers’ Group” means a group of countries that—

(A) in 1978, committed themselves to prohibit the export of certain nuclear-related commodities and technology unless the importing country agreed to a pledge of "no explosive use" and to acceptance of safeguards by the International Atomic Energy Agency; and

(B) as of the date of the enactment of this Act, is comprised of Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

(24) PERSON.—The term "person" (except when used in the term "foreign person" or "United States person") includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

(25) REEXPORT.—The term "reexport" means the shipment, transfer, transshipment, or diversion of items from one foreign country to another.

1 (26) SECRETARY.—The term “Secretary”
2 means the Secretary of Commerce.

3 (27) TECHNOLOGY.—The term “technology”
4 means specific information required for the develop-
5 ment, production, or use of a commodity.

6 (28) UNILATERAL CONTROL.—(A) The term
7 “unilateral control” means a license requirement
8 that is not agreed to by a multilateral regime for
9 any or all of the following elements: the purpose of
10 the license requirement, the items subject to the li-
11 cense requirement, the standard of review for the is-
12 suance of applications for such license, the domestic
13 and international procedures for review of such li-
14 cense applications, and the controlled countries, end
15 users, and end uses of the review policy.

16 (B) An export control shall be considered to be
17 a unilateral control maintained by the United States
18 if it is a restriction, condition, or interpretation im-
19 posed by the Secretary upon any commodities or
20 technology, or upon any license application for the
21 export of such commodities or technology, that is
22 not imposed or implemented in similar cir-
23 cumstances by other members of a multilateral re-
24 gime, or that is not otherwise specifically permitted
25 by this title.

1 (29) UNITED STATES.—The term “United
2 States” means the States of the United States, the
3 District of Columbia, and any commonwealth, terri-
4 tory, dependency, or possession of the United States,
5 and includes the Outer Continental Shelf, as defined
6 in section 2(a) of the Outer Continental Shelf Lands
7 Act (43 U.S.C. 1331(a)).

8 (30) UNITED STATES PERSON.—The term
9 “United States person” means any United States
10 resident or national (other than an individual resi-
11 dent outside the United States and employed by
12 other than a United States person), any domestic
13 concern (including any permanent domestic estab-
14 lishment of any foreign concern) and any foreign
15 subsidiary or affiliate (including any permanent for-
16 eign establishment) of any domestic concern which is
17 controlled in fact by such domestic concern, as de-
18 termined under regulations of the President.

19 (31) WEAPONS OF MASS DESTRUCTION.—The
20 term “weapons of mass destruction” means any
21 chemical, biological, or nuclear weapon, including a
22 nuclear explosive device.

23 SEC. 117. EFFECTS ON OTHER ACTS.

24 (a) COMMODITY JURISDICTION.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law—

3 (A) an item agreed for control on the
4 International Munitions List of COCOM shall
5 be subject to control under the Arms Export
6 Control Act and not under this title;

7 (B) except as provided in paragraphs (2),
8 (3), and (5), an item which is on the Inter-
9 national Industrial List of COCOM shall be
10 subject to control under this title and not under
11 the Arms Export Control Act; and

12 (C) no item may be included on both the
13 control index and the United States Munitions
14 List after publication of the lists required under
15 paragraph (4) and resolution of any dispute
16 with respect to such lists under paragraph (5).

17 (2) EXCEPTIONS.—(A) An item described in
18 subparagraph (B) that is not on the International
19 Munitions List may be subject to control under the
20 Arms Export Control Act—

21 (i)(I) for a period of 9 months after the
22 date on which the United States proposes to
23 COCOM that the item be added to the Inter-
24 national Munitions List; and

(II) for an additional 9-month period, but only if negotiations in COCOM to add the item to the International Munitions List are continuing; or

(ii) if the Secretary of State, in consultation with the Secretary, so determines, except that if the Secretary disagrees with the Secretary of State with respect to such item, the item may be subject to control under the Arms Export Control Act only if the disagreement is resolved by the Secretaries or by the President pursuant to the procedures set forth in subparagraphs (B) and (C) of paragraph (5).

(B) An item referred to in subparagraph (A) is an item that—

(i) is specifically designed, developed, configured, adapted, or modified for military or intelligence application;

(ii) does not have significant civil applications; and

(iii) is not a component the performance capacity and function of which are essentially equivalent to those used for civil applications.

(3) PRESIDENTIAL DETERMINATIONS.—An item that is not on the International Munitions List may

1 be subject to control under the Arms Export Control
2 Act if the President—

3 (A) determines that extraordinary cir-
4 cumstances exist affecting the national security
5 of the United States, which require that the
6 item be controlled under the Arms Export Con-
7 trol Act;

8 (B) proposes to COCOM that the item be
9 added to the International Munitions List; and

10 (C) not later than 10 days after making
11 the determination under subparagraph (A),
12 submits a report to the Speaker of the House
13 of Representatives and the President pro tem-
14 pore of the Senate, describing in detail the rea-
15 sons for the determination, in appropriate clas-
16 sified form, as necessary.

17 (4) PUBLICATION OF LISTS.—

18 (A)(i) Not later than 3 months after the
19 date of the enactment of this Act, the Secretary
20 shall publish the control index and the Sec-
21 retary of State shall publish the United States
22 Munitions List, with all revisions that have
23 been made in accordance with this subsection.

24 (ii) Not later than 3 months after the date
25 of the enactment of this Act, the Secretary of

State shall publish in a separate list those items remaining subject to control under the Arms Export Control Act under paragraph (2).

(iii) The publications required by clauses (i) and (ii) shall be made in the Federal Register.

(B) If either the Secretary or the Secretary of State fails to publish a revised list in accordance with subparagraph (A), there shall be excluded from the list of the Secretary that did not so publish a revised list any item included on the list of the Secretary that did so publish a revised list.

(5) COMMODITY JURISDICTION DISPUTE RESOLUTION.—

(A) Whenever—

(i) the Secretary or the Secretary of State receives a request to determine whether an item is subject to control under this title or the Arms Export Control Act,

(ii) either Secretary finds that an item is included on both the control index and the United States Munitions List,

(iii) an item appearing on the list of one Secretary under paragraph (4)(A)(i) is

1 considered by the other Secretary to be
2 under the jurisdiction of that other Sec-
3 retary, or

4 (iv) the Secretary disagrees with the
5 inclusion of an item on the list published
6 under paragraph (4)(A)(ii),
7 the Secretary or the Secretary of State (as the
8 case may be) shall refer the matter and any rel-
9 evant information to the other Secretary.

10 (B) The 2 Secretaries shall have a period
11 of 15 days following the referral of a matter
12 under subparagraph (A) to resolve any dif-
13 ferences with respect to the matter involved.

14 (C) If the 2 Secretaries fail to resolve such
15 differences within that 15-day period, either
16 Secretary may refer the matter to the Presi-
17 dent, who, not later than 15 days after receiv-
18 ing the referral, shall notify the 2 Secretaries of
19 his or her determination on the matter in dis-
20 pute.

21 (D) In the event that either the Secretary
22 or the Secretary of State does not respond to
23 a referral under subparagraph (A) by the other
24 Secretary, the Secretary that did not so respond

1 shall be deemed to concur with the other Sec-
2 retary on the matter involved.

3 (6) REFERENCES.—For purposes of this sub-
4 section, any reference to “COCOM” includes a ref-
5 erence to a successor export control regime to
6 COCOM, and any reference to the “International
7 Munitions List” or the “International Industrial
8 List” includes a reference to any successor list to
9 the International Munitions List or the International
10 Industrial List, as the case may be.

11 (b) EXPORT CONTROLS ON TELECOMMUNI-
12 CATIONS.—

13 (1) PROPOSAL TO COCOM.—The Secretary of
14 State shall, not later than 30 days after the date of
15 the enactment of this Act, propose to COCOM (or
16 to its successor export control regime) and to any
17 other export control regime that maintains controls
18 on telecommunications equipment and telecommuni-
19 cations technology, that exports of telecommuni-
20 cations equipment and telecommunications tech-
21 nology for civil end uses (determined on the basis of
22 the criteria described in section 105(c)(2)) shall not
23 require a validated license for export or authoriza-
24 tion for reexport to any of the republics of the
25 former Soviet Union, the People’s Republic of China,

1 Poland, the Czech Republic, Slovakia, Bulgaria, Ro-
2 mania, Albania, Estonia, Lithuania, or Latvia.

3 (2) DEFINITIONS.—For purposes of this
4 subsection—

5 (A) the term “telecommunications equip-
6 ment” includes—

7 (i) telephone switching systems and
8 stored program controlled communications
9 switching systems, including related fea-
10 tures and components that provide services
11 and management of telecommunications
12 networks;

13 (ii) telecommunications transmission
14 equipment;

15 (iii) microwave, light wave, and other
16 radio relay, transmitting, or test equip-
17 ment, and related components and acces-
18 sories;

19 (iv) telecommunications cables and
20 components, including optical fibers and
21 optical fiber cables;

22 (v) equipment containing frequency
23 synthesizers when used in land-based mo-
24 bile communications systems;

(vi) equipment described in any of clauses (i) through (v), or any other telecommunications equipment, that contains lasers;

(vii) computer hardware and application specific software which are related to any of the items described in clauses (i) through (vi) and are required for data communications;

(viii) all spare parts, components, and measuring or test equipment related to any of the items described in clauses (i) through (vii); and

(ix) any other equipment controlled under part I of category 5 of the Commodity Control List of the Department of Commerce as of July 1, 1993 (part 799 of title 15, Code of Federal Regulations);

(B) the term "telecommunications technology" means technology related to telecommunications equipment, including technology for the production, development, and use of telecommunications equipment;

(C) the term "telecommunications networks" includes local area, intracity, intercity,

1 and international telecommunications networks;
2 and

3 (D) the term "telecommunications" means
4 voice, video, and data communications over any
5 public or private network or broadcasting sys-
6 tem, and services related to such communica-
7 tions.

8 (3) REPORT.—Concurrent with the submission
9 of the proposal required by paragraph (1), the Presi-
10 dent shall submit to the Speaker of the House of
11 Representatives and the Committee on Banking,
12 Housing, and Urban Affairs of the Senate a report
13 certifying that the proposal required by paragraph
14 (1) has been made to the members of COCOM (or
15 its successor export control regime) and to any other
16 export control regime that maintains controls on
17 telecommunications equipment and telecommuni-
18 cations technology, and outlining the plans to gain
19 the concurrence of the other members of COCOM or
20 the appropriate regime in the proposal.

21 (c) COMPUTERS AND RELATED EQUIPMENT.—

22 (1) GENERAL RULE.—Subject to paragraphs
23 (2) and (3), the Secretary shall have exclusive au-
24 thority to control exports of all computer hardware,
25 software, and technology for information security

(including encryption), except that which is specifically designed or modified for military use, including command, control, and intelligence applications.

(2) ITEMS NOT REQUIRING LICENSES.—No validated license may be required, except pursuant to the Trading With The Enemy Act or the International Emergency Economic Powers Act (but only to the extent that the authority of such Act is not exercised to extend controls imposed under this title), for the export or reexport of—

(A) any software, including software with encryption capabilities, that is—

(i) generally available, as is, and is designed for installation by the purchaser; or

(ii) in the public domain or publicly available because it is generally accessible to the interested public in any form; or

(B) any computing device solely because it incorporates or employs in any form software (including software with encryption capabilities) exempted from any requirement for a validated license under subparagraph (A).

(3) SOFTWARE WITH ENCRYPTION CAPABILITIES.—The Secretary shall authorize the export or reexport of software with encryption capabilities for

1 civil end uses (determined on the basis of the cri-
2 teria described in section 105(c)(2)) in any country
3 to which exports of software of similar capability are
4 permitted for use by financial institutions not con-
5 trolled in fact by United States persons, unless there
6 is substantial evidence that such software will be—

7 (A) diverted to a military end use or an
8 end use supporting international terrorism;

9 (B) modified for military or terrorist end
10 use; or

11 (C) reexported without authorization by
12 the United States that is required.

13 (4) DEFINITIONS.—As used in this
14 subsection—

15 (A) the term “generally available” means,
16 in the case of software (including software with
17 encryption capabilities), software that is offered
18 for sale, license, or transfer to any person with-
19 out restriction through any commercial means,
20 including, but not limited to, over-the-counter
21 retail sales, mail order transactions, phone
22 order transactions, electronic distribution, or
23 sale on approval;

24 (B) the term “as is” means, in the case of
25 software (including software with encryption ca-

pabilities), a software program that is not designed, developed, or tailored by the software company for specific purchasers, except that such purchasers may supply certain installation parameters needed by the software program to function properly with the purchaser's computer system and may customize the software program by choosing among options contained in the software program;

(C) the term "is designed for installation by the purchaser" means, in the case of software (including software with encryption capabilities)—

(i) that the software company intends for the purchaser (including any licensee or transferee), who may not be the actual user of the software program, to install the software program on a computing device and has supplied the necessary instructions to do so, except that the company may also provide telephone help line services for software installation, electronic transmission, or basic operations; and

(ii) that the software program is designed for installation by the purchaser

without further substantial support by the supplier:

(D) the term "computing device" means a device which incorporates one or more microprocessor-based central processing units that can accept, store, process or provide output of data; and

(E) the term "computer hardware", when used in conjunction with information security, includes, but is not limited to, computer systems, equipment, application-specific assemblies, modules, and integrated circuits.

(d) IN GENERAL.—To the extent provided in this title, this title shall be construed to modify, repeal, supersede, and otherwise affect the provisions of any other laws authorizing control over exports of any commodities or technology.

(e) COORDINATION OF CONTROLS.—The authority granted under this title and under section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be exercised in such a manner as to achieve effective coordination between the dual use and munitions licensing systems, prevent the overlap of controls implemented under the 2 authorities, and share information regarding the trustworthiness of parties.

1 (f) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding
 2 any other provision of law, any civil aircraft product, or
 3 any technology used in a civil aircraft product, that is
 4 standard equipment certified or scheduled to be certified
 5 by the Federal Aviation Administration and is an integral
 6 part of such aircraft, shall be subject to export controls
 7 exclusively under this title.

8 (g) NONPROLIFERATION CONTROLS.—The provisions
 9 of section 109 shall supersede the procedures published
 10 pursuant to section 309(c) of the Nuclear Non-Prolifera-
 11 tion Act of 1978 (42 U.S.C. 2139a(c)) to the extent they
 12 are inconsistent with the provisions of section 109.

13 (h) AMENDMENTS TO THE INTERNATIONAL EMER-
 14 GENCY ECONOMIC POWERS ACT.—

15 (1) PRESIDENTIAL AUTHORIZATION.—Section
 16 203(a) of the International Emergency Economic
 17 Powers Act (50 U.S.C. 1702(a)) is amended—

18 (A) by redesignating paragraphs (2) and

19 (3) as paragraphs (3) and (4), respectively, and

20 (B) by inserting after paragraph (1) the
 21 following new paragraph:

22 “(2) The President may prohibit or curtail the expor-
 23 tation of any items on the United States Commodity Con-
 24 trol Index that are subject to the jurisdiction of the United
 25 States under this title only to the extent provided in, and

1 subject to the criteria of, sections 105, 106, and 114 of
 2 the Export Act of 1994, unless such prohibition or curtail-
 3 ment is part of an embargo (as described in section
 4 106(f)(2) of the Export Act of 1994) against the country
 5 concerned. The preceding sentence shall continue to apply
 6 notwithstanding the expiration of the Export Act of
 7 1994.”.

8 (2) CONFIDENTIALITY OF INFORMATION.—The
 9 International Emergency Economic Powers Act is
 10 amended—

11 (A) by redesignating section 208 as section
 12 209; and

13 (B) by inserting after section 207 the fol-
 14 lowing:

15 “SEC. 208. CONFIDENTIALITY OF INFORMATION.

16 “(a) EXEMPTIONS FROM DISCLOSURE.—Information
 17 obtained under this title before or after the enactment of
 18 this section may be withheld only to the extent permitted
 19 by statute, except that information submitted, obtained,
 20 or considered in connection with an application for an ex-
 21 port license or other export authorization under this title,
 22 including the export license or other export authorization
 23 itself, classification requests, information or evidence ob-
 24 tained in the course of any investigation, and information
 25 obtained or furnished under this title in connection with

1 international agreements, treaties, or obligations shall be
2 withheld from public disclosure unless the release of such
3 information is determined by the Secretary to be in the
4 national interest.

5 “(b) INFORMATION TO CONGRESS AND GAO.—

6 “(1) IN GENERAL.—Nothing in this title shall
7 be construed as authorizing the withholding of infor-
8 mation from the Congress or from the General Ac-
9 counting Office.

10 “(2) AVAILABILITY TO THE CONGRESS.—

11 “(A) IN GENERAL.—All information ob-
12 tained at any time under this title regarding
13 the control of exports, including any report or
14 license applications required under this title,
15 shall, upon request, be made available to the
16 Committee on Foreign Affairs of the House of
17 Representatives and the Subcommittee on Eco-
18 nomic Policy, Trade and the Environment of
19 such committee and to the Committee on Bank-
20 ing, Housing and Urban Affairs of the Senate
21 and the Subcommittee on International Finance
22 and Monetary Policy of such committee. Any
23 such committee or subcommittee may provide
24 other Members of Congress information ob-
25 tained under the preceding sentence but such

1 information may be not be further disclosed ex-
2 cept upon a finding made under subparagraph
3 (B).

4 “(B) PROHIBITION ON FURTHER DISCLO-
5 SURE.—No committee, subcommittee, or Mem-
6 ber of Congress shall disclose any information
7 obtained under this title or previous Acts re-
8 garding the control of exports which is submit-
9 ted to the Congress under subparagraph (A)
10 unless the Committee on Foreign Affairs of the
11 House of Representatives or the Committee on
12 Banking, Housing, and Urban Affairs of the
13 Senate determines that the withholding of that
14 information is contrary to the national interest.

15 “(3) AVAILABILITY TO THE GAO.—

16 “(A) IN GENERAL.—Notwithstanding para-
17 graph (1), information referred to in paragraph
18 (2) shall, consistent with the protection of intel-
19 ligence, counterintelligence, and law enforce-
20 ment sources, methods, and activities, as deter-
21 mined by the agency that originally obtained
22 the information, and consistent with the provi-
23 sions of section 716 of title 31, United States
24 Code, be made available only by the agency,
25 upon request, to the Comptroller General of the

United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

“(B) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this subsection, any such information which is submitted on a confidential basis and from which any individual can be identified.

“(c) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—Any officer or employee of the United States, or any department or agency thereof, who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information that—

“(1) he or she obtains in the course of his or her employment or official duties or by reason of any examination or investigation made by, or report or record made to or filed with, such department or agency, or officer or employee thereof, and

“(2) is exempt from disclosure under this section,

1 shall be fined not more than \$10,000, or imprisoned not
2 more than 1 year, or both, shall be removed from office
3 or employment, and shall be subject to a civil penalty of
4 not more than \$1,000.”.

5 **SEC. 118. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated to the De-
7 partment of Commerce to carry out the purposes of this
8 title—

9 (1) \$_____ for each of fiscal years 1995 and
10 1996; and

11 (2) such additional amounts for each of fiscal
12 years 1995 and 1996 as may be necessary for in-
13 creases in salary, pay, retirement, other employee
14 benefits authorized by law, and other nondiscretion-
15 ary costs.

16 **SEC. 119. CONFORMING AMENDMENTS TO OTHER LAWS.**

17 (a) **ARMS EXPORT CONTROL ACT.**—

18 (1) Section 71(a) of the Arms Export Control
19 Act (22 U.S.C. 2797(a)) is amended by striking
20 “6(l) of the Export Administration Act of 1979”
21 and inserting “section 105 of the Export Act of
22 1994”.

23 (2) Sections 72 and 73 of the Arms Export
24 Control Act (22 U.S.C. 2797a and 2797b) are here-
25 by repealed.

1 (3) Section 74 of the Arms Export Control Act
 2 (22 U.S.C. 2797c), is amended by striking para-
 3 graphs (3), (6), (7), (8), and (9) and redesignating
 4 paragraphs (4) and (5) as paragraphs (3) and (4),
 5 respectively.

6 (4) Chapter 8 of the Arms Export Control Act
 7 (22 U.S.C. 2798) is hereby repealed.

8 (b) CHEMICAL AND BIOLOGICAL WEAPONS.—The
 9 Chemical and Biological Weapons Control and Warfare
 10 Elimination Act of 1991 (Public Law 102-182) is hereby
 11 repealed.

12 (c) FOREST RESOURCES CONSERVATION.—Section
 13 491(f) of the Forest Resources Conservation and Shortage
 14 Relief Act of 1990 (16 U.S.C. 620c(f)) is amended by
 15 striking “supersede section 7(i) of the Export Administra-
 16 tion Act of 1979 (50 U.S.C. App. 2406(i))” and inserting
 17 “affect section 107(i) of the Export Act of 1994”.

18 (d) MISCELLANEOUS CONFORMING AMENDMENTS.—
 19 [TO BE SUPPLIED].

20 SEC. 120. EFFECTIVE DATE.

21 This title shall take effect upon the expiration of the
 22 Export Administration Act of 1979.

23 SEC. 121. EXPIRATION DATE.

24 This title expires on June 30, 1998.

1 SEC. 122. SAVINGS PROVISION.

2 (a) IN GENERAL.—All delegations, rules, regulations,
3 orders, determinations, licenses, or other forms of admin-
4 istrative action which have been made, issued, conducted,
5 or allowed to become effective under the Export Control
6 Act of 1949, the Export Administration Act of 1969, or
7 the Export Administration Act of 1979 and which are in
8 effect at the time this title takes effect shall continue in
9 effect according to their terms until modified, superseded,
10 set aside, or revoked under this title.

11 (b) ADMINISTRATIVE AND JUDICIAL PROCEED-
12 INGS.—This title shall not affect any administrative or ju-
13 dicial proceedings commenced or any application for a li-
14 cense made, under the Export Administration Act of
15 1979, which is pending at the time this title takes effect.
16 Any such proceedings, and any action on such application,
17 shall continue under the Export Administration Act of
18 1979 as if that Act had not expired.

19 **TITLE II—SANCTIONS FOR**
20 **WEAPONS PROLIFERATION**

21 SEC. 201. SANCTIONS AGAINST COUNTRIES.

22 (a) DETERMINATION BY THE PRESIDENT.—If the
23 President determines that a foreign country—

24 (1) has transferred to a non-nuclear-weapon
25 state a nuclear explosive device;

(2) if such country is a non-nuclear-weapon state, has either—

(A) received a nuclear explosive device, or

(B) detonated a nuclear explosive device,

(3) has transferred to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by the transferring country to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or

(4) if such country is a non-nuclear-weapon state, has sought and received any design information or component which is determined by the President to be important to, and intended by the recipient state for use in, the development or manufacture of any nuclear explosive device,

then the President shall forthwith report in writing his determination to the Congress and shall forthwith impose the sanctions described in subsection (b).

(b) SANCTIONS.—

(1) IMPOSITION OF SANCTIONS.—The President shall impose the sanctions provided under section 111(b) on a country for which the President has made a determination under subsection (a), except that the 2-year requirement under section 111(b)

1 shall not apply. The provisions of section 111(b)
2 shall apply with respect to the imposition of sanc-
3 tions under this section to the same extent as such
4 section applies to the imposition of sanctions on a
5 country under section 111(b). For purposes of ap-
6 plying the provisions of section 111(b)(5), the Presi-
7 dent, in lieu of the determination described in such
8 subsection, must determine that the country has ter-
9 minated the activities giving rise to the sanctions
10 under this section, and has given assurances that it
11 will not engage in such activities in the future.

12 (2) DELAY IN IMPOSITION OF SANCTIONS.—

13 Notwithstanding paragraph (1), the President may,
14 for a period of not more than 30 days of continuous
15 session, delay the imposition of sanctions which
16 would otherwise be required under paragraph (1) if
17 the President first transmits to the Speaker of the
18 House of Representatives, and to the Chairman of
19 the Committee on Foreign Relations of the Senate,
20 a certification that he has determined that an imme-
21 diate imposition of sanctions on that country would
22 be detrimental to the national security of the United
23 States. Not more than one such certification may be
24 transmitted for a country with respect to the same

1 detonation, transfer, or receipt of a nuclear explosive
2 device.

3 (3) CONGRESSIONAL AUTHORIZATION OF WAIV-
4 ER.—(A) If the President transmits a certification
5 to the Congress under paragraph (2), a joint resolu-
6 tion which would permit the President to exercise
7 the waiver authority of paragraph (4) shall, if intro-
8 duced in either House within 30 days of continuous
9 session after the Congress receives such certification,
10 be considered in the Senate and House of Represent-
11 atives in accordance with subparagraphs (B) and
12 (C).

13 (B) Any joint resolution under this paragraph
14 shall be considered in the Senate in accordance with
15 the provisions of section 601(b) of the International
16 Security Assistance and Arms Export Control Act of
17 1976.

18 (C) For the purpose of expediting the consider-
19 ation and adoption of joint resolution under this
20 paragraph, a motion to proceed to the consideration
21 of such a joint resolution after it has been reported
22 by the appropriate committee shall be treated as
23 highly privileged in the House of Representatives.

24 (D) For purposes of this paragraph, the term
25 “joint resolution” means a joint resolution the mat-

1 ter after the resolving clause of which is as follows:
2 “That the Congress having received on _____ a
3 certification by the President under section
4 201(b)(2) of the Export Administration Act of
5 1994 with respect to _____, the Congress hereby
6 authorizes the President to exercise the waiver au-
7 thority contained in section 201(b)(4) of that Act.”,
8 with the date of receipt of the certification inserted
9 in the first blank and the name of the country in-
10 serted in the second blank.

11 (4) WAIVER.—Notwithstanding paragraph (1),
12 if the Congress enacts a joint resolution under para-
13 graph (3), the President may waive any sanction
14 which would otherwise be required under paragraph
15 (1) if he determines and certifies in writing to the
16 Speaker of the House of Representatives and the
17 Committee on Foreign Relations of the Senate that
18 the imposition of such sanction would be seriously
19 prejudicial to the achievement of United States non-
20 proliferation objectives or otherwise jeopardize the
21 common defense and security. The President shall
22 transmit with such certification a statement setting
23 forth the specific reasons therefor.

24 (5) CONTINUITY OF SESSION.—For purposes of
25 this subsection, continuity of session is broken only

1 by an adjournment of the Congress sine die and the
2 days on which either House is not in session because
3 of an adjournment of more than three days to a day
4 certain are excluded in the computation of any pe-
5 riod of time in which Congress is in continuous ses-
6 sion.

7 (6) PROVISIONS REGARDING DESIGN INFORMA-
8 TION OR COMPONENT VIOLATIONS.—(A) In the
9 event the President is required to impose sanctions
10 against a country under subsection (a)(3) or (4), the
11 President shall do so beginning 30 days after sub-
12 mitting to the Congress the report required by sub-
13 section (a) unless, and to the extent that, there is
14 enacted during the 30-day period a law prohibiting
15 the imposition of such sanctions.

16 (B) Notwithstanding any other provision of this
17 title, the sanctions which are required to be imposed
18 against a country under subsection (a)(3) or (4)
19 shall not apply if the President determines and cer-
20 tifies in writing to the Committee on Foreign Rela-
21 tions and the Committee on Governmental Affairs of
22 the Senate and the Committee on Foreign Affairs of
23 the House of Representatives that the application of
24 such sanctions against such country would have a
25 serious adverse effect on vital United States inter-

1 ests. The President shall transmit with such certifi-
2 cation a statement setting forth the specific reasons
3 therefor.

4 (c) DEFINITIONS.— As used in this section—

5 (1) the term “design information” means infor-
6 mation that relates to the design of a nuclear explo-
7 sive device and that is not available to the public;
8 and

9 (2) the term “component” means a component
10 of a nuclear explosive device.

11 SEC. 202. ARMS SALES AND FOREIGN ASSISTANCE.

12 (a) ARMS SALES.—

13 (1) Section 3 of the Arms Export Control Act
14 (22 U.S.C. 2753) is amended by adding at the end
15 the following new subsection:

16 “(f) No sales or leases shall be made under this Act
17 to any country that the President has determined is in
18 material breach of its commitments to the United States
19 under international treaties, agreements, or understand-
20 ings concerning the nonproliferation of weapons of mass
21 destruction (as defined in section 116(31) of the Export
22 Act of 1994) and unsafeguarded special nuclear material
23 (as defined in section 208(4) of the Export Administration
24 Act of 1994).”.

(2) Section 40 of such Act (22 U.S.C. 2780) is amended—

(A) in subsection (d), by adding at the end the following new sentence: “For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of weapons of mass destruction or willfully aid or abet an individual or group in acquiring unsafeguarded special nuclear material.”; and

(B) in subsection (l)—

(i) in paragraph (2), by striking “and” after the semicolon;

(ii) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following:

“(4) the term ‘weapons of mass destruction’ has the meaning given that term in section 116(31) of the Export Act of 1994; and

“(5) the term ‘unsafeguarded special nuclear material’ has the meaning given that term in section 208(4) of the Export Administration Act of 1994.”.

1 (b) AMENDMENTS TO THE FOREIGN ASSISTANCE
2 ACT OF 1961.—

3 (1) Section 670(a)(2) of the Foreign Assistance
4 Act of 1961 (22 U.S.C. 2429a(a)(2)) is amended in
5 the first sentence—

6 (A) by inserting “in any fiscal year” after
7 “President”; and

8 (B) by inserting “during that fiscal year”
9 after “certifies in writing”.

10 (2) Notwithstanding any other provision of law,
11 Presidential Determination No. 82-7 of February
12 10, 1982, made pursuant to section 670(a)(2) of the
13 Foreign Assistance Act of 1961, shall have no force
14 or effect with respect to any grounds for the prohibi-
15 tion of assistance under section 670(a)(1) of such
16 Act arising on or after the effective date of this title.

17 (3) Section 620E(d) of the Foreign Assistance
18 Act of 1961 (22 U.S.C. 2375(d)) is amended to read
19 as follows:

20 “(d) The President may waive the prohibitions of sec-
21 tion 669 of this Act with respect to any grounds for the
22 prohibition of assistance under that section arising before
23 the effective date of title II of the Export Administration
24 Act of 1994 to provide assistance to Pakistan if the Presi-

1 dent determines that to do so is in the national interest
2 of the United States.”.

3 SEC. 203. ROLE OF INTERNATIONAL FINANCIAL INSTITU-
4 TIONS.

5 (a) IN GENERAL.—The Secretary of the Treasury
6 shall instruct the United States executive director to each
7 of the international financial institutions described in sec-
8 tion 701(a) of the International Financial Institutions Act
9 (22 U.S.C. 262d(a)) to use the voice and vote of the Unit-
10 ed States to oppose any direct or indirect use of the insti-
11 tution's funds to promote the acquisition of weapons of
12 mass destruction, or unsafeguarded special nuclear mate-
13 rial by any non-nuclear-weapon state.

14 (b) DUTIES OF UNITED STATES EXECUTIVE DIREC-
15 TORS.—Section 701(b)(3) of the International Financial
16 Institutions Act (22 U.S.C. 262d(b)(3)) is amended to
17 read as follows:

18 “(3) whether the recipient country—

19 “(A) is seeking to acquire unsafeguarded
20 special nuclear material (as defined in section
21 208(4) of the Export Administration Act of
22 1994) or weapons of mass destruction (as de-
23 fined in section 116(32) of the Export Act of
24 1994;

1 “(B) is not a party or adherent to the
2 Treaty on the Non-Proliferation of Nuclear
3 Weapons, the MTCR, the Australia Group,
4 COCOM, or any other multilateral control re-
5 gime; or

6 “(C) has detonated a nuclear explosive de-
7 vice; and”.

8 SEC. 204. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-
9 ANCE CORPORATION IMPROVEMENT ACT OF
10 1991.

11 The Federal Deposit Insurance Corporation Improve-
12 ment Act of 1991 is amended by adding at the end the
13 following new title:

14 **“TITLE VI—SANCTIONS ON**
15 **FINANCIAL INSTITUTIONS**

16 “SEC. 601. PRESIDENTIAL DETERMINATION.

17 “(a) IN GENERAL.—The prohibitions in section 603
18 shall be imposed on a financial institution if the President
19 determines that such financial institution, on or after the
20 date which is 60 days after the date of the enactment of
21 this section, has materially and with requisite knowledge
22 contributed, through provision of financing or other serv-
23 ices, to the efforts by any individual, group, or government
24 to acquire weapons of mass destruction or unsafeguarded
25 special nuclear material or to use, develop, produce, stock-

1 pile, or otherwise acquire any weapons of mass destruc-
2 tion.

3 “(b) PRESIDENTIAL ORDER.—Whenever the Presi-
4 dent makes a determination under subsection (a) with re-
5 spect to a financial institution, the President shall issue
6 an order specifying a date within 180 days after such de-
7 termination on which the prohibitions in section 603 shall
8 begin to apply to such institution.

9 “SEC. 602. ADDITIONAL ENTITIES AGAINST WHICH SANC-
10 TIONS ARE TO BE IMPOSED.

11 “The prohibitions described in section 603 shall also
12 be imposed, pursuant to section 601, on—

13 “(1) any successor entity to the financial insti-
14 tution with respect to which the President makes a
15 determination under section 601(a);

16 “(2) any foreign person or United States person
17 that is a parent or subsidiary of that financial insti-
18 tution if that parent or subsidiary materially and
19 with requisite knowledge assisted in the activities
20 which were the basis of that determination; and

21 “(3) any foreign person or United States person
22 that is an affiliate of that financial institution if that
23 affiliate materially and with requisite knowledge as-
24 sisted in the activities which were the basis of such

1 determination and if that affiliate is controlled in
2 fact by that financial institution.

3 "SEC. 603. PROHIBITIONS.

4 "The following prohibitions shall apply to a financial
5 institution with respect to which a determination is made
6 under section 601(a) and to the entities described in sec-
7 tion 602:

8 "(1) BAN ON DEALINGS IN GOVERNMENT FI-
9 NANCE.—

10 "(A) DESIGNATION AS PRIMARY DEAL-
11 ER.—Neither the Board of Governors of the
12 Federal Reserve System nor the Federal Re-
13 serve Bank of New York may designate, or per-
14 mit the continuation of any prior designation
15 of, such financial institution or any such entity
16 as a primary dealer in United States Govern-
17 ment debt instruments.

18 "(B) GOVERNMENT FUNDS.—Such finan-
19 cial institution or any such entity shall not
20 serve as agent of the United States Government
21 or serve as repository for United States Govern-
22 ment funds.

23 "(2) RESTRICTIONS ON OPERATIONS.—Such fi-
24 nancial institution or any such entity shall not, di-
25 rectly or indirectly—

“(A) commence any line of business in the United States in which it was not engaged as of the date of the determination; or

“(B) conduct business from any location in the United States at which it did not conduct business as of the date of the determination.

“SEC. 604. CONDITIONS AND TERMINATION OF SANCTIONS.

“The same requirements for consultation with the foreign government of jurisdiction, where appropriate, and for removal of sanctions shall apply under this title as are provided in subsections (a)(6) and (c), respectively, of section 111 of the Export Act of 1994.

“SEC. 605. WAIVER.

“The President may waive the imposition of any prohibition imposed on any financial institution or other entity pursuant to section 601 or 602 if the President determines and certifies to the Congress that the imposition of such prohibition would have a serious adverse effect on the safety and soundness of the domestic or international financial system or on domestic or international payments systems.

“SEC. 606. DEFINITIONS.

“As used in this title—

“(1) the term ‘financial institution’ includes—

1 “(A) a depository institution, including a
2 branch or agency of a foreign bank;

3 “(B) a securities firm, including a broker
4 or dealer;

5 “(C) an insurance company, including an
6 agency or underwriter;

7 “(D) any other company that provides fi-
8 nancial services; or

9 “(E) any subsidiary of any entity described
10 in subparagraph (A), (B), (C), or (D);

11 “(2) the term ‘requisite knowledge’ means situ-
12 ations in which a person ‘knows’, as ‘knowing’ is de-
13 fined in section 104 of the Foreign Corrupt Prac-
14 tices Act of 1977 (15 U.S.C. 78dd-2);

15 “(3) the terms ‘foreign person’, ‘United States
16 person’, and ‘weapons of mass destruction’ have the
17 meanings given those terms in section 116 of the
18 Export Act of 1994; and

19 “(4) the term ‘unsafeguarded special nuclear
20 material’ has the meaning given that term in section
21 208(4) of the Export Administration Act of 1994.”.

22 SEC. 205. EXPORT-IMPORT BANK.

23 Section 2(b)(4) of the Export-Import Bank Act of
24 1945 (12 U.S.C. 635(b)(4)) is amended in the first sen-
25 tence by inserting after “device” the following: “(as de-

1 fined in section 208(1) of the Export Administration Act
 2 of 1994), or that any country has willfully aided or abetted
 3 any non-nuclear-weapon state (as defined in section
 4 208(2) of that Act) to acquire any such nuclear explosive
 5 device or to acquire unsafeguarded special nuclear mate-
 6 rial (as defined in section 208(4) of that Act), or has un-
 7 lawfully aided or abetted in the proliferation of weapons
 8 of mass destruction (as defined in section 116(31) of the
 9 Export Act of 1994) in violation of its commitments to
 10 the United States under international treaties, agree-
 11 ments, or understandings”.

12 SEC. 206. REPORTS.

13 (a) CONTENT OF ACDA ANNUAL REPORT.—Section
 14 52 of the Arms Control and Disarmament Act (22 U.S.C.
 15 2592) is amended—

16 (1) by inserting “(a) IN GENERAL.—” before
 17 “The Congress”;

18 (2) by striking “and” at the end of paragraph
 19 (4);

20 (3) by striking the period at the end of para-
 21 graph (5) and inserting “; and”;

22 (4) by adding after paragraph (5) the following
 23 new paragraph:

24 “(6) a section of the report shall deal with any
 25 material noncompliance by foreign governments with

1 their commitments to the United States with respect
2 to the prevention of the spread of nuclear explosive
3 devices (as defined in section 208(1) of the Export
4 Administration Act of 1994) by non-nuclear-weapon
5 states (as defined in section 208(2) of that Act) or
6 the acquisition by such states of unsafeguarded spe-
7 cial nuclear material (as defined in section 208(4) of
8 that Act), including—

9 “(A) a net assessment of the aggregate
10 military significance of all such violations;

11 “(B) a statement of the compliance policy
12 of the United States with respect to violations
13 of those commitments; and

14 “(C) what actions, if any, the President
15 has taken or proposes to take to bring any na-
16 tion committing such a violation into compli-
17 ance with its commitments.”; and

18 (5) by adding at the end the following new sub-
19 section:

20 “(b) REPORTING CONSECUTIVE NONCOMPLIANCE.—

21 If the President in consecutive reports submitted to the
22 Congress under this section reports that any designated
23 nation is not in full compliance with its nonproliferation
24 commitments to the United States, then the President
25 shall include in the second such report an assessment of

1 what actions are necessary to compensate for such viola-
 2 tions.”.

3 (b) REPORTING ON DEMARCHES.—

4 (1) SENSE OF CONGRESS.—It is the sense of
 5 the Congress that the Department of State should,
 6 in the course of implementing its reporting respon-
 7 sibilities under section 602(c) of the Nuclear Non-
 8 Proliferation Act of 1978, include a summary of
 9 demarches that the United States has issued or re-
 10 ceived from foreign governments with respect to ac-
 11 tivities which are of significance from the prolifera-
 12 tion standpoint.

13 (2) DEFINITION.—For purposes of this section,
 14 the term “demarche” means any official communica-
 15 tion by one government to another, by written or
 16 oral means, intended by the originating government
 17 to express—

18 (A) a concern over a past, present, or pos-
 19 sible future action or activity of the recipient
 20 government, or of a person within the jurisdic-
 21 tion of that government, contributing to the
 22 global spread of unsafeguarded special nuclear
 23 material or of nuclear explosive devices;

24 (B) a request for the recipient government
 25 to counter such action or activity; or

(C) both the concern and request described
in subparagraphs (A) and (B).

SEC. 207. TECHNICAL CORRECTION.

Section 133 b. of the Atomic Energy Act of 1954 (42 U.S.C. 260c) is amended by striking "20 kilograms" and inserting "5 kilograms".

SEC. 208. DEFINITIONS.

For purposes of this title—

(1) the term "nuclear explosive device" means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT);

(2) the term "non-nuclear-weapon state" means any country which is not a nuclear-weapon state, as defined by Article IX (3) of the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968;

(3) the term "special nuclear material" has the meaning given that term in section 11 aa. of the Atomic Energy Act of 1954 (42 U.S.C. 2014aa);
and

1 (4) the term “unsafeguarded special nuclear
2 material” means special nuclear material which is
3 held in violation of IAEA safeguards or not subject
4 to IAEA safeguards (excluding any quantity of ma-
5 terial that could, if it were exported from the United
6 States, be exported under a general license issued by
7 the Nuclear Regulatory Commission).

8 SEC. 209. EFFECTIVE DATE.

9 The provisions of this title, and the amendments
10 made by this title, shall take effect 60 days after the date
11 of the enactment of this Act.

12 **TITLE III—INTERNATIONAL**
13 **ATOMIC ENERGY AGENCY**

14 SEC. 301. BILATERAL AND MULTILATERAL INITIATIVES.

15 It is the sense of the Congress that in order to main-
16 tain and enhance international confidence in the effective-
17 ness of IAEA safeguards and in other multilateral under-
18 takings to halt the global proliferation of nuclear weapons,
19 the United States should seek to negotiate with other na-
20 tions and groups of nations, including the IAEA Board
21 of Governors and the Nuclear Suppliers Group, to—

22 (1) build international support for the principle
23 that nuclear supply relationships must require pur-
24 chasing nations to agree to full-scope international
25 safeguards;

1 (2) encourage each nuclear-weapon state within
2 the meaning of the Treaty to undertake a com-
3 prehensive review of its own procedures for declas-
4 sifying information relating to the design or produc-
5 tion of nuclear explosive devices and to investigate
6 any measures that would reduce the risk of such in-
7 formation contributing to nuclear weapons prolifera-
8 tion;

9 (3) encourage the deferral of international ef-
10 forts to produce weapons-grade nuclear material for
11 large-scale commercial uses until such time as safe-
12 guards are developed that can detect, on a timely
13 and reliable basis, the diversion of significant quan-
14 tities of such material for nuclear explosive pur-
15 poses;

16 (4) pursue greater financial support for the im-
17 plementation and improvement of safeguards from
18 all IAEA member nations with significant nuclear
19 programs, particularly from those nations that are
20 currently using or planning to use weapons-grade
21 nuclear material for commercial purposes;

22 (5) arrange for the timely payment of annual fi-
23 nancial contributions by all members of the IAEA,
24 including the United States;

1 (6) pursue a prohibition on international com-
2 merce in highly enriched uranium for use in research
3 reactors while encouraging multilateral cooperation
4 to develop and to use low-enriched alternative nu-
5 clear fuels;

6 (7) oppose efforts by non-nuclear-weapon states
7 to develop or use unsafeguarded nuclear fuels for
8 purposes of naval propulsion;

9 (8) pursue an international open skies arrange-
10 ment that would authorize the IAEA to operate sur-
11 veillance aircraft and would facilitate IAEA access
12 to satellite information for safeguards verification
13 purposes;

14 (9) develop an institutional means for IAEA
15 member nations to share intelligence material with
16 the IAEA on possible safeguards violations without
17 compromising national security or intelligence
18 sources or methods;

19 (10) require any exporter of a sensitive nuclear
20 facility or sensitive nuclear technology to a non-nu-
21 clear-weapon state to notify the IAEA prior to ex-
22 port and to require safeguards over that facility or
23 technology, regardless of its destination; and

24 (11) seek agreement among the parties to the
25 Treaty to apply IAEA safeguards in perpetuity and

1 to establish new limits on the right to withdraw from
2 the Treaty.

3 SEC. 302. IAEA INTERNAL REFORMS. .

4 In order to promote the early adoption of reforms in
5 the implementation of the safeguards responsibilities of
6 the IAEA, the Congress urges the President to negotiate
7 with other nations and groups of nations, including the
8 IAEA Board of Governors and the Nuclear Suppliers
9 Group, to—

10 (1) improve the access of the IAEA within nu-
11 clear facilities that are capable of producing, proc-
12 essing, or fabricating special nuclear material suit-
13 able for use in a nuclear explosive device;

14 (2)(A) facilitate the IAEA's efforts to meet and
15 to maintain its own goals for detecting the diversion
16 of nuclear materials and equipment, giving particu-
17 lar attention to facilities in which there are bulk
18 quantities of plutonium; and

19 (B) if it is not technically feasible for the IAEA
20 to meet those detection goals in a particular facility,
21 require the IAEA to declare publicly that it is un-
22 able to do so;

23 (3) enable the IAEA to issue fines for violations
24 of safeguards procedures, to pay rewards for infor-
25 mation on possible safeguards violations, and to es-

1 tablish a 'hot line' for the reporting of such viola-
2 tions and other illicit uses of weapons-grade nuclear
3 material;

4 (4) establish safeguards at facilities engaged in
5 the manufacture of equipment or material that is es-
6 pecially designated or prepared for the processing,
7 use, or production of special fissionable material or,
8 in the case of non-nuclear-weapon states, of any nu-
9 clear explosive device;

10 (5) establish safeguards over nuclear research
11 and development activities and facilities;

12 (6) implement special inspections of undeclared
13 nuclear facilities, as provided for under existing safe-
14 guards procedures, and seek authority for the IAEA
15 to conduct challenge inspections on demand at sus-
16 pected nuclear sites;

17 (7) expand the scope of safeguards to include
18 tritium, uranium concentrates, and nuclear waste
19 containing special fissionable material, and increase
20 the scope of such safeguards on heavy water;

21 (8) revise downward the IAEA's official mini-
22 mum amounts of nuclear material ("significant
23 quantity") needed to make a nuclear explosive device
24 and establish these amounts as national rather than
25 facility standards;

(9) expand the use of full-time resident IAEA inspectors at sensitive fuel cycle facilities;

(10) promote the use of near real time material accountancy in the conduct of safeguards at facilities that use, produce, or store significant quantities of special fissionable material;

(11) develop with other IAEA member nations an agreement on procedures to expedite approvals of visa applications by IAEA inspectors;

(12) provide the IAEA the additional funds, technical assistance, and political support necessary to carry out the goals set forth in this section; and

(13) make public the annual safeguards implementation report of the IAEA, establishing a public registry of commodities in international nuclear commerce, including dual-use goods, and creating a public repository of current nuclear trade control laws, agreements, regulations, and enforcement and judicial actions by IAEA member nations.

SEC. 303. REPORTING REQUIREMENT.

(a) REPORT REQUIRED.—The President shall, in the report required by section 601(a) of the Nuclear Non-Proliferation Act of 1978, describe—

(1) the steps he has taken to implement sections 301 and 302, and

1 (2) the progress that has been made and the
2 obstacles that have been encountered in seeking to
3 meet the objectives set forth in sections 301 and
4 302.

5 (b) CONTENTS OF REPORT.—Each report under
6 paragraph (1) shall describe—

7 (1) the bilateral and multilateral initiatives that
8 the President has taken during the period since the
9 enactment of this Act in pursuit of each of the ob-
10 jectives set forth in sections 301 and 302;

11 (2) any obstacles that have been encountered in
12 the pursuit of those initiatives;

13 (3) any additional initiatives that have been
14 proposed by other countries or international organi-
15 zations to strengthen the implementation of LAEA
16 safeguards;

17 (4) all activities of the Federal Government in
18 support of the objectives set forth in sections 301
19 and 302;

20 (5) any recommendations of the President on
21 additional measures to enhance the effectiveness of
22 LAEA safeguards; and

23 (6) any initiatives that the President plans to
24 take in support of each of the objectives set forth in
25 sections 301 and 302.

1 SEC. 304. DEFINITIONS.

2 For purposes of this title—

3 (1) the term “highly enriched uranium” means
4 uranium enriched to 20 percent or more in the iso-
5 tope U-235;

6 (2) the term “IAEA” means the International
7 Atomic Energy Agency;

8 (3) the term “IAEA safeguards” means the
9 safeguards set forth in an agreement between a
10 country and the International Atomic Energy Agen-
11 cy, as authorized by Article III(A)(5) of the Statute
12 of the International Atomic Energy Agency;

13 (3) the term “near real time material account-
14 ancY” means a method of accounting for the loca-
15 tion, quantity, and disposition of special fissionable
16 material at facilities that store or process such mate-
17 rial, in which verification of peaceful use is continu-
18 ously achieved by means of frequent physical inven-
19 tories and the use of in-process instrumentation;

20 (4) the term “special fissionable material” has
21 the meaning given that term by Article XX(1) of the
22 Statute of the International Atomic Energy Agency,
23 done at the Headquarters of the United Nations on
24 October 26, 1956;

25 (5) the term “the Treaty” means the Treaty on
26 the Non-Proliferation of Nuclear Weapons, signed at

1 Washington, London, and Moscow on July 1, 1968;
2 and
3 (6) the terms "IAEA safeguards", "non-nu-
4 clear-weapon state", "nuclear explosive device", and
5 "special nuclear material" have the meanings given
6 those terms in section 208 of this Act.



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